

## APPENDIX A

Agenda for The March 6, 2003.....	A-1
Minutes of The March 6, 2003 Meeting.....	A- 2
Ch 40B Task Force Members.....	A-12
Schedule For The Task Force.....	A-13
List Of Bills Proposing Changes To 40B.....	A-14
Planned Production Guidelines.....	A-27
Notes To Accompany DHCD's Subsidized Housing Inventory.....	A-32
Guidelines For Housing Programs In Which Funding Is Provided Through A Non-Governmental Entity.....	A-41





Commonwealth of Massachusetts  
**DEPARTMENT OF HOUSING &  
COMMUNITY DEVELOPMENT**

Mitt Romney, Governor ♦ Kerry Healey, Lt. Governor ♦ Jane Wallis Gumble, Director

**AGENDA**

**Chapter 40B Task Force  
Thursday, March 6, 2003**

- I. Welcome
- II. Introductions
- III. Ground Rules
- IV. Purpose of the Task Force – (Doug Foy and Jane Wallis Gumble)
- V. Background
  - Brief History (Clark Ziegler, Executive Director, MHP)
  - Overview of Recent Changes (Anne Marie Gaertner, DHCD)
- VI. Initial Task Force Discussion
- VII. Agenda for March 18 Meeting

CHAPTER 40B TASK FORCE  
FINAL MINUTES OF THE MARCH 6, 2003 MEETING

Commission Members:

Jane Wallis Gumble	Task Force Chair, Director, DHCD
Fred Habib	Facilitator, Non-Voting member, Deputy Director, DHCD
Mark Bobrowski ( <i>Absent</i> )	Municipal Consultant, Professor, New England School of Law
Senator Harriette Chandler	Senate Chair, HUD Committee
Jack Clarke	Director of Advocacy, Massachusetts Audubon Society
Howard Cohen	Board Member, Citizens Housing & Planning Association
Representative Michael Coppola	Massachusetts House of Representatives
Marc Draisen ( <i>Absent</i> )	Executive Director, Metropolitan Area Planning Council
Steve Dubuque	President, Massachusetts Non-Profit Housing Association
Representative Robert Fennell	House Chair, HUD Committee
Thomas Gleason	Executive Director, MassHousing
Bennet Heart	Attorney, Conservation Law Foundation
Representative Kevin Honan	House Chair, HUD Committee
Michael Jaillet ( <i>Absent</i> )	MMA Housing Subcommittee
Al Lima	Planning Director, City of Marlborough
Bill McLaughlin	President, Rental Housing Association of the GBREB
Kathleen O'Donnell	Attorney, Kopelman & Paige
Gwen Pelletier	Board Member, Massachusetts Association of CDC's
Mayor Sharon Pollard	City of Methuen
Jeff Rhuda	Homebuilders Association of Massachusetts
Representative Harriett Stanley	Massachusetts House of Representatives
Senator Bruce Tarr	HUD Committee
Senator Susan Tucker	HUD Committee
Senator Diane Wilkerson	Massachusetts Senate
Clark Ziegler	Executive Director, Massachusetts Housing Partnership

Attendees:

Judith Alland	MAPC
Arthur Bergeron	Attorney
Roger Blood	Brookline Housing Advisory Board
Joy Conway	GBREB
Marilyn Contreas	DHCD
Lynn Duncan	Town of Wilmington
Elizabeth Dillan	HUD Committee
Matt Feher	MMA
Ben Fierro	Lynch & Fierro, LLP
Rebecca Frawley	DHCD
Anne Marie Gaertner	DHCD
Aaron Gornstein	CHAPA
Fred Habib	DHCD
Lincoln Heineman	Office of Representative Hynes
Ronald Marlow	Office of Senator Wilkenson
Nancy McDonald	MassHousing
Matt Moran	Office of Senator Knapik

CHAPTER 40B TASK FORCE  
FINAL MINUTES OF THE MARCH 6, 2003 MEETING

*Attendees (Continued):*

Chris Norris	CHAPA
Kristen Olsen	DHCD
Todd Prussman	Office of Representative Stanley
Bob Ruzzo	MassHousing
Anne Tate	Office for Commonwealth Development
Anna Waclawiczek	Office of Representative Fennell
Jon Witten	Horsley & Witten, Inc.
Sarah B. Young	DHCD
Juanita Zerda	DHCD

Materials Distributed:

Task Force Member List  
Task Force Meeting Schedule  
List of Bills Proposing Changes to Chapter 40B  
Planned Production Guidelines  
Notes to the Subsidized Housing Inventory  
Chapter 40B Regulations (Blue Book)  
Guidelines for Housing Programs in Which Funding is Provided Through a Non-Governmental Entity

Introductory Remarks:

Jane Wallis Gumble, Director of DHCD and Chair of the Chapter 40B Task Force, brought the meeting to order shortly after 10:00 AM. Ms. Gumble welcomed the Task Force members as well as those in attendance in the audience. She noted according to Governor Romney, the mission of the task force is to improve 40B, not to eliminate it. She then introduced Doug Foy, Chief of the Office for Commonwealth Development.

Mr. Foy noted he was looking forward to the recommendations of the Task Force and that he hoped to see innovative ideas on how to make 40B more powerful and successful in the framework of the administration's goal of doubling housing starts. He acknowledged that the group had a significant task before it, and that it would require a substantial commitment from the members. He added that if he or Governor Romney could provide any assistance, they would be happy to provide it. He noted his confidence in Ms. Gumble's ability to make this successful.

Fred Habib (facilitator), Deputy Director of DHCD introduced himself and proceeded to review the materials that had been distributed to Task Force members. He then asked the Task Force members as well as members of the audience to introduce themselves. After the introductions, Mr. Habib noted that DHCD staff Anne Marie Gaertner, Bill Reyelt, Marilyn Contreas, and Kristen Olsen would be facilitating activities of the Task Force. Mr. Habib noted that DHCD intended to distribute materials to anyone who was interested and that the most efficient method would be via email. He designated Anne Marie Gaertner, Senior Policy Advisor for DHCD, as The Task Force's single point of

CHAPTER 40B TASK FORCE  
FINAL MINUTES OF THE MARCH 6, 2003 MEETING

contact for anyone wishing to receive or distribute information, and requested that in the future people contact her via email or phone at: [anne.marie.gaertner@ocd.state.ma.us](mailto:anne.marie.gaertner@ocd.state.ma.us) or (617) 727-7765 ext. 128.

Mr. Habib then discussed some general rules of conduct for the Task Force. He noted the importance of keeping the meetings free-flowing and asked that people restrict their comments to 2-3 minutes and avoid speech making. He reiterated the willingness of DHCD to distribute information/materials at any meeting and noted that minutes from Task Force meetings would be distributed within 4 business days.

Mr. Habib briefly reviewed the purpose of the Task Force, noting the following four key tasks:

1. Reaffirm the need to increase the supply of housing, a portion of which should be affordable to households earning less than 80% of the area median income.
2. Assess the effectiveness of the 40B statute to address the aforementioned need.
3. Identify the impacts created by 40B and determine whether they are commensurate with the public benefit.
4. Propose modifications that would mitigate harmful impacts or that would improve the effectiveness of 40B.

In order to provide the members of the Task Force with the same basic level of knowledge of 40B, Mr. Habib asked that Clark Ziegler, Executive Director of the Massachusetts Housing Partnership provide a history of 40B and Anne Marie Gaertner provide an overview of the recent regulatory changes made to 40B.

History of 40B

Mr. Ziegler noted that 40B was enacted 1969 as a result of a legislative commission that had studied unmet housing needs in Massachusetts. He explained that in its first decade (1970s), 40B produced relatively few projects and controversies, which he attributed to a weak economy and reductions in federal housing assistance programs. He also noted that during this time period communities and developers were learning how the process worked.

Mr. Ziegler pointed out that in the early 1980s increased market growth coupled with two new state programs, e.g. Homeownership Opportunity Program (HOP) & State Housing Rental Assistance Program (SHARP), led to more 40B proposals and more controversy. Starting in 1985/1986 there was tremendous market growth, credit was readily available for developers, state government was supporting the development of mixed income housing, and a lot of housing was built outside of the cities. He noted that at this point 40B became most controversial, and that as towns were facing a lot of growth pressure in general, 40B became a lightning rod for their frustration. He explained that during this time the state was encouraging towns to take the lead, to be proactive and set local priorities and identify land appropriate for affordable housing. This, he noted, created a tension between communities trying to control their own destiny and the unmet market demand. There was a great deal of concern expressed by communities about coping with 40B developments. The Legislature sought to preserve 40B while addressing the concerns of the communities.

---

CHAPTER 40B TASK FORCE  
FINAL MINUTES OF THE MARCH 6, 2003 MEETING

In 1987, a Special Commission to Study 40B was established and they had meetings throughout the state to see what 40B was accomplishing and what its problems were. The Commission issued a report in April of 1989 with the following three key recommendations:

1. subsidy definition should include actions taken by local government to build affordable housing.
2. emphasize "good faith" and planning efforts of the communities to provide housing
3. create climate of more support for local efforts, provide technical assistance.

Mr. Ziegler noted that the recommendations in the Commission's report were implemented early in 1990, but by that point the real estate market was in "freefall" and the provision of the law relating to local housing planning was not being used. By the late 1990's the same pressures returned with a fast growing housing market and the introduction of the New England Fund subsidy program. Towns were once again overwhelmed. He then asked Anne Marie Gaertner to discuss the regulatory changes to 40B that have been implemented since March 2001.

Recent Regulatory Changes to 40B:

Ms. Gaertner noted that the recent increase in 40B applications could be attributed to the state of the real estate market and the introduction of new funding sources. Ms. Gaertner noted that there have been three rounds of regulatory changes, and proceeded to review the details of the regulatory changes as outlined in the attached handout titled "Summary of Recent 40B Regulatory Changes."

Ms. Gaertner was asked if there was anything in the Omnibus Housing Bill that was not incorporated by DHCD's regulatory changes. She responded saying that everything from the Omnibus Housing Bill had been incorporated, though there were some minor technical changes made at then Governor Jane Swift's request.

Jon Witten noted that communities had expressed concern that MassHousing would not be a stringent gatekeeper as the new project administrator of the New England Fund, and asked how many applications MassHousing received for project eligibility letters and how many they had denied.

Tom Gleason, Executive Director of MassHousing, responded stating that though he did not have the numbers with him, he could say that the majority of requests were approved. He indicated that those that are rejected are rejected because they are "grossly inappropriate" for housing, and that the site approval letter sets the stage for local negotiation of a project, and is not the "final arbiter" of a project. Howard Cohen also noted that as somebody who has received a number of site approval letters from MassHousing, most of them included conditions to mitigate the impacts of housing.

Different Perspectives: Communities, Neighbors, and Developers:

CHAPTER 40B TASK FORCE  
FINAL MINUTES OF THE MARCH 6, 2003 MEETING

Senator Wilkerson expressed the need to hear from cities and towns, as well as developers, on how they "walk through" the process. She sees this as critical to determine what the problems are, and what appears to be working. She also expressed concerns about how this group would report and make recommendations. She asked if the group would work by consensus or voting, and urged that the group take up this question fairly early in the process.

Mr. Habib asked the group to indicate topics for presentations that would be useful.

Representative Michael Coppola noted that the infrastructure (water, sewer, services, schools and wetlands) of fast growing communities is most impacted by 40B projects. He added that communities struggling to meet the demand of strong growth are frustrated when 40B projects are "dumped" on them and the ZBAs won't set conditions because they believe the Housing Appeals Committee favors developers and will overturn town decisions.

Ms. Gumble interjected noting that the statistics show that this perception of the Housing Appeals Committee is a myth. She added that an independent analysis of 40B over the past 30 years found that similar percentages of Housing Appeals Committee decisions were in favor of communities and developers, and that a large number of cases have been settled to the parties' satisfaction or withdrawn. Ms. Gumble added that this research, prepared by Bonnie Heudorfer, would be presented at the next meeting. She hoped Ms. Heudorfer's findings would help people to understand the reality of the process and what 40B has accomplished.

Attorney Kathleen O'Donnell of Kopelman & Paige, noted she has worked with several communities on the South Shore on 40B projects, and volunteered to put together an overview of the process, adding that it is expensive and time-consuming for communities.

Mayor Sharon Pollard briefly shared Methuen's experiences with 40B proposals, noting that cities and towns feel that self-determination, community character, quality of life, and open space are threatened by 40B. Mayor Pollard noted that taking commercial land for affordable housing 'zaps' the tax base, and the state's building assistance fund constrains the ability to build new schools. Mayor Pollard suggested making 40B more workable for communities.

It was agreed that Attorney Kathleen O'Donnell, Mayor Pollard, and Al Lima would coordinate a "walk through" of the 40B process from the community perspective.

It was suggested that a presentation of the mechanics of 40B from the developer's perspective be made at the next meeting as well. It was agreed that Jeff Rhuda, Bill McLaughlin, and Gwen Pelletier would provide the "walk through" from the developer's perspective.



---

CHAPTER 40B TASK FORCE  
FINAL MINUTES OF THE MARCH 6, 2003 MEETING

Mr. Witten suggested that the committee should also hear from the neighbors/abutters of 40B proposals.

Mr. Habib proposed that one representative from a neighborhood group speak to the committee at the next meeting and work with Kathleen O'Donnell of the community perspective group. Mr. Witten said that he is working with several and that he would be able to represent their concerns.

Bill McLaughlin, President, Rental Housing Association of the GBREB suggested that a tour of existing 40B sites would be helpful.

Mr. Gleason requested that those who were putting together "walk through" presentations of the process identify the components of a successful process. He noted that as much as we want to talk about the problems, there has been a lot of great housing built under 40B. He added that very few complaints are made once the housing is built.

Senator Wilkerson noted that she had requested the "walk through" presentations because of the need to identify what is real and what is perception. Senator Wilkerson also noted the need for communities to take responsibility for addressing the needs of the Commonwealth. She added that a fragile housing market is not good for the economy.

Legislative Review:

Jack Clarke, Director of Advocacy for the Massachusetts Audubon Society, suggested that everyone read the 68 bills that have already been proposed.

Attorney Bennet Heart of the Conservation Law Foundation suggested that somebody put together a summary of the 68 bills currently proposed, noting that some may be duplicative of each other, and that some may have already been incorporated by DHCD regulations. Mr. Habib requested that Steve Carvalho, Legislative Director of the Office

of Intergovernmental and Legislative Affairs, Aaron Gornstein, Executive Director of CHAPA, and HUD Committee staff present a summary of the bills proposing changes to 40B. Mr. Carvalho, and Mr. Gornstein agreed.

Housing Need:

Attorney Bennet Heart expressed his concerns about the unintended consequences of 40B, and specifically asked if there were many housing units that satisfy 40B in all respects except that they don't have a subsidy. He was concerned that this would discourage communities from pursuing affordable housing projects because they don't have subsidy.

Mr. Habib suggested that DHCD could try to assemble census data on affordable housing in communities in Massachusetts to address Mr. Heart's concerns about existing non-subsidized affordable housing.

Senator Harriette Chandler asked how many communities have housing plans and what resources are available to help towns move forward.

CHAPTER 40B TASK FORCE  
FINAL MINUTES OF THE MARCH 6, 2003 MEETING

Mr. Habib responded to Senator Chandler, noting that Executive Order 418 provides planning and consulting services to create community development plans and that 250 communities are participating in the program.

Mr. Heart suggested that the Task Force reserve some time to take a regional or statewide look at growth patterns and smart growth principles. He suggested that the Task Force consider where they wanted to foster development, and the financial incentives that could be used towards that goal. He noted that many states use smart growth principals in administering Low Income Housing Tax Credit (LIHTC) programs, and suggested that DHCD look into that as well. He expressed his belief that it is incumbent upon the Task Force to look at smart growth principles to improve 40B.

Senator Bruce Tarr suggested reviewing the build-out analyses from EOEa to identify communities with capacity as well as those that have been built-out. Senator Tarr proposed that the crisis in this state is that often the people who do make higher incomes can't find a place to live. He noted that companies can't recruit employees because of housing stock issues and that the Task Force should look at the segmentation of the housing need in light of the McMansions that are currently being built.

Local Initiatives:

Steve Dubuque, President of Massachusetts Non-Profit Housing Association, noted that many projects are now initiated at the local level, and that communities are now talking about affordable housing for the first time in many years. He asked people to make suggestions on how to increase supply.

Attorney Kathleen O'Donnell suggested that communities use Community Preservation Act funds to buy property and place affordable housing deed restrictions on it, as well as provide tax title land to developers or non-profits to create affordable housing.

Mr. Ziegler noted that MHP has encouraged towns to provide affordable housing without 40B, and volunteered to do a presentation on the types of affordable housing projects that towns have done on their own. He added that the process for these community initiatives can be slow, but the results are great.

Barriers to Development:

Senator Tarr suggested that the group discuss other barriers to development, such as the cost of land and the cost of litigation. He noted his concerns that the amount of money that has been invested in confrontations over 40B proposals could have been used to build much more affordable housing than has actually been built under 40B. He then suggested that the group ask developers what would help them to build housing besides 40B, noting that it could be useful to explore another path.

Howard Cohen, Board member of CHAPA, indicated that he would like to speak to cost of confrontation. He noted that in his experience, any development that is proposed is

## CHAPTER 40B TASK FORCE

## FINAL MINUTES OF THE MARCH 6, 2003 MEETING

being opposed. He noted that the school issue is everywhere, and that communities don't want kids because they can't afford them. He then asked, 'Where should they go?' He noted that the 75% of the units in 40B projects that are market rate are rented-up instantly because there is such a demand. He added that Massachusetts has had a dramatic "down-zoning" in past years, and that there is very little multi-family zoning. He noted that there is some data from one of the think tanks that suggests Massachusetts has increased the cost of housing by 30-40% due to land use practices. He added that we are pushing out the people the state needs most - college graduates.

Jeff Rhuda of the Homebuilders Association of Massachusetts suggested that the real problem is not 40B, but the misuse of 40A. He added that in his experience as a developer, he has appeared before many communities and there has been tremendous pressure from abutters not to build at all, regardless of the type of housing (40B or traditional subdivision). He also noted that Massachusetts is ranked 47<sup>th</sup> in the nation in issuance of building permits per capita.

Mr. Dubuque noted that there were problems with the way the current real estate tax system works and that he was concerned about affordable housing adding school children.

Mr. McLaughlin suggested that the Task Force study the actual impacts of rental and ownership housing built under 40B, and specifically, the number of school aged-children that are really in these developments and the actual impacts on sewer/water.

Senator Wilkerson noted that developers could only build either subsidized or high-end housing because of the cost of development, which she attributed to the use of zoning by cities and towns to prevent growth.

Representative Michael Coppola added that the Commonwealth of Massachusetts is very protective of wetlands, water resources, and Title V, and noted that all these things add to the time and cost of permitting.

Mr. Rhuda noted that 40B does not allow you to override any state regulations, including Title V. Mr. Rhuda then compared zoning books to cookbooks for developers, telling them what and where they can build. He explained that Ch. 40B simply changed the cookbooks.

Mr. McLaughlin noted that most of the larger 40B developments that are privately subsidized do not receive a dollar from the state, rather MassHousing provides a loan which developers repay, and the market rate units subsidize the below-market units.

Mr. Gleason agreed that most large 40B developments are internally subsidized, but that the root source of the subsidy is the community via density bonuses. He noted the questions the Task Force needs to ask are "How do we get housing built faster?" and

CHAPTER 40B TASK FORCE  
FINAL MINUTES OF THE MARCH 6, 2003 MEETING

“What do communities need to get this done?” He added that subsidies come and go, but the density bonuses from the communities will always be the greatest subsidy.

Some Task Force members expressed an interest in conducting site visits of 40B developments. At this time no site visits have been scheduled. DHCD will post photographs and distribute CHAPA’s publication “The Homes of 40B”, which will illustrate and describe 40B developments for the Task Force members.

For 3/18 /03 Meeting:

Mr. Habib then summarized the presentations for the next meeting. They are as follows:

- Housing Market Picture: DHCD
- Presentation of the process from the community perspective: Attorney Kathleen O’Donnell, Mayor Pollard and Al Lima
- Presentation of the process from the developer perspective: Bill McLaughlin, Jeff Rhuda, and Gwen Pelletier
- Legislative Briefing: Steve Carvalho, Aaron Gornstein, HUD Committee staff
- Analysis of what 40B has built: Bonnie Heudorfer

Closing Remarks:

Ms. Gumble thanked everyone for agreeing to serve on the Task Force, and noted that they had quite a job ahead, but if anyone could do it, this group could. She went on to say that she found it very encouraging that people are not opposed to mixed-income housing in general, but just how to build it.

The following list was prepared by DHCD staff as a summary of the problems that have been identified by the Task Force and the proposed topics or data that will be presented at upcoming meetings.

Problems

Large impact of local services

Myth v. reality

Limited siting choices

Limited local resources

Children per unit and educational costs

Misuse of 40A

Middle income housing affordability gap

Dramatic “downzoning” as less dense uses are now allowed

No zoned land for multi-family housing

Land use planning function dysfunctional

Enormous pressure not to develop

Both local and state environmental regs. perceived as too stringent to development

Proposed Topics or Data to be Presented

Presentation of the affordable units in communities without subsidies

Presentation on EO 418 plans

CHAPTER 40B TASK FORCE

FINAL MINUTES OF THE MARCH 6, 2003 MEETING

Where do we want to foster growth - Smart Growth/Regional Growth Patterns/Low

Income Housing Tax Credits

Chapter 40B slide show

What is happening in other states

Examine Audubon Society proposal on regional housing plans and credits

Presentation by the Housing Appeals Committee

Data Impact on Local Services

Presentation regarding resources for building housing outside of the Chapter 40B process  
(Clark Z and others)

CHAPTER 40B TASKFORCE MEMBERS

1. Jane W. Gumble, Director, Chair, Department of Housing & Community Development
2. Thomas R. Gleason, Executive Director, MassHousing
3. Clark Ziegler, Executive Director Massachusetts Housing Partnership
4. Senator Harriette Chandler, Senate Chair of the HUD Committee
5. Senator Susan Tucker, HUD Committee
6. Senator Bruce Tarr, HUD Committee
7. Senator Diane Wilkerson
8. Representative Michael Coppola
9. Representative Robert Fennell
10. Representative Kevin Honan, House Chair of the HUD Committee
11. Representative Harriett Stanley
12. Mayor Sharon Pollard, Mayor, City of Methuen
13. Michael A. Jaillet, Westwood, Chair, MMA Housing Subcommittee, Town Administrator, Westwood
14. Al Lima, City Planner, City of Marlborough
15. Mark Bobrowski, Municipal Consultant, Professor New England School of Law
16. Kathleen O'Donnell, Attorney, Kopelman & Paige
17. Howard Cohen, Board Member, CHAPA
18. William McLaughlin, Rental Housing Assoc. of the Greater Boston Real Estate Board
19. Jeff Rhuda, Homebuilders Association, Homebuilders Association
20. Steve Dubuque, President, Massachusetts Non-Profit Housing Association
21. Gwen Pelletier, Board Member, Massachusetts Association of CDC
22. Bennet Heart, Attorney, Conservation Law
23. Marc Draisen, Executive Director, Metropolitan Area Planning Council
24. Jack Clarke, Director of Advocacy, MA Audubon Society

**Schedule of the Task Force**

The Governor has requested that the Task Force deliver a report of its findings to him no later than May 30, 2003. In order to prepare and deliver a report in accordance with this deadline, the meetings will be held on the following dates and times:

Thursday, March 6	10:00 AM – 12:00 PM
Tuesday, March 18	10:00 AM – 12:00 PM
Monday, March 31	2:00 – 4:00 PM
Monday, April 14	2:00 – 4:00 PM
Monday, April 28	2:00 – 4:00 PM
Monday, May 12	2:00 – 4:00 PM

Unless notification is made prior to the meeting, all meetings will be held in conference room A located within DHCD's offices at 1 Congress Street, Boston on the 10<sup>th</sup> floor.

---

**CHAPTER 40B BILLS IN CURRENT LEGISLATIVE SESSION**

---

<a href="#">HB 558</a>	<a href="#">Finegold, Barry R.</a>	Relating to affordable housing.
	Track Code(s):	OLD
	Bill History:	12-04-02 H Filed 01-01-03 H Referred to Joint Committee on Housing and Urban Development 01-01-03 S Senate concurs in committee referral
<a href="#">HB 794</a>	<a href="#">Coppola, Michael J.</a>	Relating to Massachusetts comprehensive permit law.
	Track Code(s):	OLD
	Bill History:	12-04-02 H Filed 01-01-03 H Referred to Joint Committee on Local Affairs 01-01-03 S Senate concurs in committee referral
<a href="#">HB 907</a>	<a href="#">Fagan, James H.</a>	Relating to the appeals process for permits.
	Track Code(s):	OLD
	Bill History:	12-04-02 H Filed 01-01-03 H Referred to Joint Committee on Housing and Urban Development 01-01-03 S Senate concurs in committee referral
<a href="#">HB 909</a>	<a href="#">Greene, William G. Jr.</a>	Relating to low and moderate income housing.
	Track Code(s):	OLD
	Bill History:	12-04-02 H Filed 01-01-03 H Referred to Joint Committee on Housing and Urban Development 01-01-03 S Senate concurs in committee referral
<a href="#">HB 910</a>	<a href="#">Miceli, James R.</a>	Relating to low and moderate income housing.
	Track Code(s):	OLD
	Bill History:	12-04-02 H Filed 01-01-03 H Referred to Joint Committee on Housing and Urban Development 01-01-03 S Senate concurs in committee referral
<a href="#">HB 911</a>	<a href="#">Miceli, James R.</a>	Relating to housing appeals.



Track Code(s): OLD

Bill History: 12-04-02 H Filed  
01-01-03 H Referred to Joint Committee on Housing and Urban Development  
01-01-03 S Senate concurs in committee referral

[HB 1095](#) [Donovan, Carol A.](#) Relating to low and moderate income housing.

Track Code(s): OLD

Bill History: 12-04-02 H Filed  
01-01-03 H Referred to Joint Committee on Housing and Urban Development  
01-01-03 S Senate concurs in committee referral

[HB 1096](#) [Donovan, Carol A.](#) Relating to low and moderate income housing and rental occupancy.

Track Code(s): OLD

Bill History: 12-04-02 H Filed  
01-01-03 H Referred to Joint Committee on Housing and Urban Development  
01-01-03 S Senate concurs in committee referral

[HB 1097](#) [Donovan, Carol A.](#) Relating to low and moderate income housing.

Track Code(s): OLD

Bill History: 12-04-02 H Filed  
01-01-03 H Referred to Joint Committee on Housing and Urban Development  
01-01-03 S Senate concurs in committee referral

[HB 1098](#) [Donovan, Carol A.](#) Relating to low and moderate income housing and group homes.

Track Code(s): OLD

Bill History: 12-04-02 H Filed  
01-01-03 H Referred to Joint Committee on Housing and Urban Development  
01-01-03 S Senate concurs in committee referral

[HB 1099](#) [Donovan, Carol A.](#) Relating to eligibility for low and moderate income housing.

Track Code(s): OLD

Bill History: 12-04-02 H Filed  
01-01-03 H Referred to Joint Committee on Housing and Urban

Development  
01-01-03 S Senate concurs in committee referral

[HB 1100](#) [Donovan, Carol A.](#) Relating to defining low and moderate income housing.

Track Code(s): OLD

Bill History: 12-04-02 H Filed  
01-01-03 H Referred to Joint Committee on Housing and Urban Development  
01-01-03 S Senate concurs in committee referral

[HB 1101](#) [Donovan, Carol A.](#) Relating to the affordability of low and moderate income housing.

Track Code(s): OLD

Bill History: 12-04-02 H Filed  
01-01-03 H Referred to Joint Committee on Housing and Urban Development  
01-01-03 S Senate concurs in committee referral

[HB 1102](#) [Donovan, Carol A.](#) Relating to applications for low and moderate income housing.

Track Code(s): OLD

Bill History: 12-04-02 H Filed  
01-01-03 H Referred to Joint Committee on Housing and Urban Development  
01-01-03 S Senate concurs in committee referral

[HB 1103](#) [Donovan, Carol A.](#) Relating to low and moderate income housing units.

Track Code(s): OLD

Bill History: 12-04-02 H Filed  
01-01-03 H Referred to Joint Committee on Housing and Urban Development  
01-01-03 S Senate concurs in committee referral

[HB 1104](#) [Donovan, Carol A.](#) Relating to defining low and moderate income housing.

Track Code(s): OLD

Bill History: 12-04-02 H Filed  
01-01-03 H Referred to Joint Committee on Housing and Urban Development  
01-01-03 S Senate concurs in committee referral

<a href="#">HB 1105</a>	<a href="#">Donovan, Carol A.</a>	Relating to low and moderate income housing and accessory apartments.
	Track Code(s):	OLD
	Bill History:	12-04-02 H Filed 01-01-03 H Referred to Joint Committee on Housing and Urban Development 01-01-03 S Senate concurs in committee referral
<a href="#">HB 1293</a>	<a href="#">Galvin, William</a>	Relating to low and moderate housing.
	Track Code(s):	OLD
	Bill History:	12-04-02 H Filed 01-01-03 H Referred to Joint Committee on Housing and Urban Development 01-01-03 S Senate concurs in committee referral
<a href="#">HB 1493</a>	<a href="#">Stanley, Harriett L.</a>	Relating to the preservation of affordable housing.
	Track Code(s):	OLD
	Bill History:	12-04-02 H Filed 01-01-03 H Referred to Joint Committee on Housing and Urban Development 01-01-03 S Senate concurs in committee referral
<a href="#">HB 1494</a>	<a href="#">Stanley, Harriett L.</a>	Relating to the preservation of affordable housing.
	Track Code(s):	OLD
	Bill History:	12-04-02 H Filed 01-01-03 H Referred to Joint Committee on Housing and Urban Development 01-01-03 S Senate concurs in committee referral
<a href="#">HB 1495</a>	<a href="#">Stanley, Harriett L.</a>	Relating to the preservation of affordable housing.
	Track Code(s):	OLD
	Bill History:	12-04-02 H Filed 01-01-03 H Referred to Joint Committee on Housing and Urban Development 01-01-03 S Senate concurs in committee referral
<a href="#">HB 1496</a>	<a href="#">Stanley, Harriett L.</a>	Relating to the preservation of affordable housing.
	Track Code(s):	OLD

*Bill History:* 12-04-02 H Filed  
01-01-03 H Referred to Joint Committee on Housing and Urban Development  
01-01-03 S Senate concurs in committee referral

[HB 1497](#) [Stanley, Harriett L.](#) Relating to the preservation of affordable housing.

*Track Code(s):* OLD

*Bill History:* 12-04-02 H Filed  
01-01-03 H Referred to Joint Committee on Housing and Urban Development  
01-01-03 S Senate concurs in committee referral

[HB 1498](#) [Stanley, Harriett L.](#) Relating to the preservation of affordable housing.

*Track Code(s):* OLD

*Bill History:* 12-04-02 H Filed  
01-01-03 H Referred to Joint Committee on Housing and Urban Development  
01-01-03 S Senate concurs in committee referral

[HB 1499](#) [Stanley, Harriett L.](#) Relating to the preservation of affordable housing.

*Track Code(s):* OLD

*Bill History:* 12-04-02 H Filed  
01-01-03 H Referred to Joint Committee on Housing and Urban Development  
01-01-03 S Senate concurs in committee referral

[HB 1500](#) [Stanley, Harriett L.](#) Petition of Harriet L. Stanley, James R. Miceli, Marie J. Parente, James H. Fagan. Relating to the preservation of affordable housing.

*Track Code(s):* OLD

*Bill History:* 12-04-02 H Filed  
01-01-03 H Referred to Joint Committee on Housing and Urban Development  
01-01-03 S Senate concurs in committee referral

[HB 1501](#) [Stanley, Harriett L.](#) Relating to the preservation of affordable housing.

*Track Code(s):* OLD

*Bill History:* 12-04-02 H Filed  
01-01-03 H Referred to Joint Committee on Housing and Urban Development

01-01-03 S Senate concurs in committee referral

[HB 1502](#) [Stanley, Harriett L.](#) Relating to the preservation of affordable housing.

Track Code(s): OLD

Bill History: 12-04-02 H Filed  
01-01-03 H Referred to Joint Committee on Housing and Urban Development  
01-01-03 S Senate concurs in committee referral

[HB 1503](#) [Stanley, Harriett L.](#) Relating to the preservation of affordable housing.

Track Code(s): OLD

Bill History: 12-04-02 H Filed  
01-01-03 H Referred to Joint Committee on Housing and Urban Development  
01-01-03 S Senate concurs in committee referral

[HB 1504](#) [Stanley, Harriett L.](#) Relating to the preservation of affordable housing.

Track Code(s): OLD

Bill History: 12-04-02 H Filed  
01-01-03 H Referred to Joint Committee on Housing and Urban Development  
01-01-03 S Senate concurs in committee referral

[HB 1505](#) [Stanley, Harriett L.](#) Relating to the preservation of affordable housing.

Track Code(s): OLD

Bill History: 12-04-02 H Filed  
01-01-03 H Referred to Joint Committee on Housing and Urban Development  
01-01-03 S Senate concurs in committee referral

[HB 1506](#) [Stanley, Harriett L.](#) Relating to the preservation of affordable housing.

Track Code(s): OLD

Bill History: 12-04-02 H Filed  
01-01-03 H Referred to Joint Committee on Housing and Urban Development  
01-01-03 S Senate concurs in committee referral

[HB 1507](#) [Stanley, Harriett](#) Relating to the preservation of affordable housing.

[L.](#)

Track Code(s): OLD

Bill History: 12-04-02 H Filed  
01-01-03 H Referred to Joint Committee on Housing and Urban Development  
01-01-03 S Senate concurs in committee referral

[HB 1669](#)

[Speliotis, Theodore C.](#)

Relating to housing linkage in cities and towns.

Track Code(s): OLD

Bill History: 12-04-02 H Filed  
01-01-03 H Referred to Joint Committee on Housing and Urban Development  
01-01-03 S Senate concurs in committee referral

[HB 1827](#)

[Larkin, Peter J.](#)

Relating to affordable housing.

Track Code(s): OLD

Bill History: 12-04-02 H Filed  
01-01-03 H Referred to Joint Committee on Education, Arts and Humanities  
01-01-03 S Senate concurs in committee referral

[HB 2060](#)

[Timilty, Walter F.](#)

Relating to 40B projects in Randolph.

Track Code(s): OLD

Bill History: 12-04-02 H Filed  
01-01-03 H Referred to Joint Committee on Housing and Urban Development  
01-01-03 S Senate concurs in committee referral

[HB 2243](#)

[O'Brien, Thomas J.](#)

Relating to low and moderate income housing.

Track Code(s): OLD

Bill History: 12-04-02 H Filed  
01-01-03 H Referred to Joint Committee on Housing and Urban Development  
01-01-03 S Senate concurs in committee referral

[HB 2424](#)

[Fagan, James H.](#)

Relating to low and moderate income housing.

Track Code(s): OLD

Bill History: 12-04-02 H Filed  
01-01-03 H Referred to Joint Committee on Government Regulations

01-01-03 S Senate concurs in committee referral

[HB 2440](#) [Fagan, James H.](#) Relating to low and moderate income housing.

Track Code(s): OLD

Bill History: 12-04-02 H Filed  
01-01-03 H Referred to Joint Committee on Housing and Urban Development  
01-01-03 S Senate concurs in committee referral

[HB 2606](#) [Bradley, Garret J.](#) Relating to low and moderate income housing.

Track Code(s): OLD

Bill History: 12-04-02 H Filed  
01-01-03 H Referred to Joint Committee on Housing and Urban Development  
01-01-03 S Senate concurs in committee referral

[HB 2607](#) [Golden, Brian P.](#) Relating to production of affordable housing.

Track Code(s): OLD

Bill History: 12-04-02 H Filed  
01-01-03 H Referred to Joint Committee on Housing and Urban Development  
01-01-03 S Senate concurs in committee referral

[HB 2812](#) [Jones, Bradley H. Jr.](#) Relating to non-transferable comprehensive permits.

Track Code(s): OLD

Bill History: 12-04-02 H Filed  
01-01-03 H Referred to Joint Committee on Housing and Urban Development  
01-01-03 S Senate concurs in committee referral

[HD 2438](#) [O'Brien, Thomas J.](#) Relating to zoning permits.

Track Code(s): OLD

Bill History: 12-04-02 H Filed

[HD 2840](#) [Bradley, Garret J.](#) Relating to low and moderate income housing.

Track Code(s): OLD

*Bill History:* 12-04-02 H Filed

[HD 2847](#) [Bradley, Garret J.](#) Relating to 40B projects in Cohasset.

*Track Code(s):* OLD

*Bill History:* 12-04-02 H Filed

[HD 2901](#) [Hynes, Frank M.](#) Relating to inclusionary zoning.

*Track Code(s):* OLD

*Bill History:* 12-04-02 H Filed

[HD 3389](#) [Hynes, Frank M.](#) Relating to low and moderate income housing.

*Track Code(s):* OLD

*Bill History:* 12-04-02 H Filed

[HD 3390](#) [Hynes, Frank M.](#) Relating to preservation of affordable housing.

*Track Code(s):* OLD

*Bill History:* 12-04-02 H Filed

[HD 3391](#) [Hynes, Frank M.](#) Relating to a study of Chapter 40B.

*Track Code(s):* OLD

*Bill History:* 12-04-02 H Filed

[HD 3392](#) [Hynes, Frank M.](#) Relating to low and moderate income housing.

*Track Code(s):* OLD

*Bill History:* 12-04-02 H Filed

[HD 3393](#) [Hynes, Frank M.](#) Relating to production of affordable housing.

*Track Code(s):* OLD

*Bill History:* 12-04-02 H Filed

[HD 3432](#) [George, Thomas N.](#) Relating to production of affordable housing.

*Track Code(s):* OLD

*Bill History:* 12-04-02 H Filed



<a href="#">HD 3548</a>	<a href="#">Peterson, George N. Jr.</a>	Relating to amending a zoning act.
	Track Code(s):	OLD
	Bill History:	12-04-02 H Filed
<a href="#">HD 3601</a>	<a href="#">Jones, Bradley H. Jr.</a>	Relating to low income housing.
	Track Code(s):	OLD
	Bill History:	12-04-02 H Filed
<a href="#">HD 3603</a>	<a href="#">Jones, Bradley H. Jr.</a>	Relating to affordable housing.
	Track Code(s):	OLD
	Bill History:	12-04-02 H Filed
<a href="#">HD 3827</a>	<a href="#">Hynes, Frank M.</a>	Relating to affordable housing.
	Track Code(s):	OLD
	Bill History:	12-04-02 H Filed 12-04-02 H Filed
<a href="#">HD 3828</a>	<a href="#">Hynes, Frank M.</a>	Relating to preservation of affordable housing.
	Track Code(s):	OLD
	Bill History:	12-04-02 H Filed 12-04-02 H Filed
<a href="#">HD 3864</a>	<a href="#">Hynes, Frank M.</a>	Relating to preservation and production of housing.
	Track Code(s):	OLD
	Bill History:	12-04-02 H Filed 12-04-02 H Filed
<a href="#">SB 701</a>	<a href="#">Chandler, Harriet L.</a>	Relating to low and moderate income housing.
	Track Code(s):	OLD
	Bill History:	12-04-02 S Filed 01-01-03 S Referred to Joint Committee on Housing and Urban Development 01-01-03 H House concurs in committee referral

<a href="#"><u>SB 704</u></a>	<a href="#"><u>Hedlund, Robert L.</u></a>	Relating to affordable housing in perpetuity.
	<i>Track Code(s):</i>	OLD
	<i>Bill History:</i>	12-04-02 S Filed 01-01-03 S Referred to Joint Committee on Housing and Urban Development 01-01-03 H House concurs in committee referral
<a href="#"><u>SB 705</u></a>	<a href="#"><u>Hedlund, Robert L.</u></a>	Relating to affordable housing and comprehensive permits.
	<i>Track Code(s):</i>	OLD
	<i>Bill History:</i>	12-04-02 S Filed 01-01-03 S Referred to Joint Committee on Housing and Urban Development 01-01-03 H House concurs in committee referral
<a href="#"><u>SB 706</u></a>	<a href="#"><u>Hedlund, Robert L.</u></a>	Relating to affordable housing and a permit moratorium.
	<i>Track Code(s):</i>	OLD
	<i>Bill History:</i>	12-04-02 S Filed 01-01-03 S Referred to Joint Committee on Housing and Urban Development 01-01-03 H House concurs in committee referral
<a href="#"><u>SB 712</u></a>	<a href="#"><u>Magnani, David P.</u></a>	Relating to low income housing requirement methods.
	<i>Track Code(s):</i>	OLD
	<i>Bill History:</i>	12-04-02 S Filed 01-01-03 S Referred to Joint Committee on Housing and Urban Development 01-01-03 H House concurs in committee referral
<a href="#"><u>SB 719</u></a>	<a href="#"><u>Murray, Therese</u></a>	Relating to low or moderate income housing.
	<i>Track Code(s):</i>	OLD
	<i>Bill History:</i>	12-04-02 S Filed 01-01-03 S Referred to Joint Committee on Housing and Urban Development 01-01-03 H House concurs in committee referral
<a href="#"><u>SB 722</u></a>	<a href="#"><u>Panagiotakos, Steven C.</u></a>	Relating to affordable housing and educational costs.

Track Code(s): OLD

Bill History: 12-04-02 S Filed  
01-01-03 S Referred to Joint Committee on Housing and Urban Development  
01-01-03 H House concurs in committee referral

[SB 726](#) [Resor, Pamela P.](#) Relating to development plans for affordable housing.

Track Code(s): OLD

Bill History: 12-04-02 S Filed  
01-01-03 S Referred to Joint Committee on Housing and Urban Development  
01-01-03 H House concurs in committee referral

[SB 739](#) [Tucker, Susan C.](#) Relating to compensation for communities and affordable housing.

Track Code(s): OLD

Bill History: 12-04-02 S Filed  
01-01-03 S Referred to Joint Committee on Housing and Urban Development  
01-01-03 H House concurs in committee referral

[SB 741](#) [Wilkerson, Dianne](#) Relating to the production of affordable housing.

Track Code(s): OLD

Bill History: 12-04-02 S Filed  
01-01-03 S Referred to Joint Committee on Housing and Urban Development  
01-01-03 H House concurs in committee referral

[SB 965](#) [Creedon, Robert S.](#) Relating to enforcement of zoning regulations.

Track Code(s): OLD

Bill History: 12-04-02 S Filed  
01-01-03 S Referred to Joint Committee on Judiciary  
01-01-03 H House concurs in committee referral

[SB 1152](#) [Resor, Pamela P.](#) Relating to low and moderate income housing.

Track Code(s): OLD

Bill History: 12-04-02 S Filed  
01-01-03 S Referred to Joint Committee on Local Affairs  
01-01-03 H House concurs in committee referral

[SB 1174](#)

[Resor, Pamela  
P.](#)

Relating to land use reforms and zoning.

*Track Code(s):* OLD

*Bill History:* 12-04-02 S Filed  
01-01-03 S Referred to Joint Committee on Local Affairs  
01-01-03 H House concurs in committee referral

**- End of Report -**



Commonwealth of Massachusetts  
**DEPARTMENT OF HOUSING &  
 COMMUNITY DEVELOPMENT**

Mitt Romney, Governor ♦ Kerry Healey, Lt. Governor ♦ Jane Wallis Gumble, Director

**MGL Chapter 40B Guidelines for Planned Production Regulation**  
**760 CMR 31.07(1)(i)**

**1. Introduction**

These guidelines describe the process and requirements for local development of an affordable housing plan, submission of the plan for state approval and certification of municipal compliance with the plan in accordance with the regulations.

In accordance with regulations promulgated by the Department of Housing and Community Development (DHCD), cities and towns may:

- Develop and adopt an affordable housing plan for approval by the Department,
- Request certification of compliance with the plan by demonstrating production of an increase of at least 3/4 of one percent of total year round housing units in low and moderate income housing units that are eligible for inclusion on the Subsidized Housing Inventory, and
- Through local Zoning Board of Appeals action, deny a comprehensive permit application during the period of certified compliance.

A community certified to be in compliance with an affordable housing plan may deny comprehensive permit applications for a one year period following certification that it has produced  $\frac{3}{4}$  of one percent of total housing units, or two years if it has produced 1.5% of total housing units.

**2. Affordable Housing Plan**

To be approved by the Department, a community must adopt an affordable housing plan consistent with the regulations and these guidelines.

- Overall, the plan must establish a context for municipal action with regard to housing based on a comprehensive housing needs analysis that examines current community demographics, existing housing stock characteristics, development conditions and constraints, municipal ability to mitigate those constraints and an evaluation of municipal infrastructure.
- The plan must address a mix of housing consistent with identified needs and feasible within the housing market, specific strategies by which the community will achieve its housing goals and descriptions of the use restrictions the community will use to ensure affordability.
- The plan must also address at least one or more of the following actions:
  - Identification of geographic areas in which land use regulations will be modified to accomplish affordable housing production goals,

- Identification of specific sites on which Comprehensive Permit applications are to be encouraged,
  - Preferable characteristics of residential development such as infill development, clustered uses, and compact development, or
  - Municipally owned parcels for which development proposals will be sought.
- The plan must address the long term-use restrictions that will be placed on the affordable housing units.

A community's plan may also address other local actions to accomplish its housing goals.

Many communities have adopted plans that contain the required elements of an affordable housing plan or a series of planning documents that contain some of the requirements. Master plans, Executive Order 418 community development plans or housing certification strategies, Consolidated Plans or Affordable Housing Strategies produced within the past 5 years may contain some or all of the necessary information to achieve certification under this regulation.

Whether a newly produced plan, a previously produced plan, or a compilation of elements from previously developed plans, materials submitted to the Department for certification as an **affordable housing plan must be accompanied by a summary document** in the following format that paraphrases the plan elements, identifies the specific location of any materials cited within the planning documents and specifies the reasons why the community believes the submitted materials satisfy the Department's approval requirements.

### **Summary Submission – Planned Production Regulation – Affordable Housing Plan**

#### Section 1. Comprehensive Housing Needs Assessment (See 760 CMR 31.07(1)(i)(1))

#### Section 2. Affordable Housing Goals (See 760 CMR 31.07(1)(i)(2)(a))

- Including the mix of housing sought by the community
- Including timeframe/schedules for production of units

#### Section 3. Affordable Housing Strategy (See 760 CMR 31.07(1)(i)(2)(b) and 760 CMR 31.07(1)(i)(3))

- May include zoning areas which are proposed to be modified to accommodate residential development
- May include identification of specific sites for which comprehensive permit applications would be encouraged
- May include preferred characteristics of development
- May include identification of municipally owned parcels for which housing development proposals would be sought

#### Section 4. Description of Use Restrictions (See 760 CMR 31.07(1)(i)(2)(c))

### **3. Approval of Affordable Housing Plan**

Communities that develop a plan in accordance with the regulations and this guidance may submit the plan to the Department for approval. The plan must be submitted by the municipality's chief elected official (in a city, the mayor; in a town, the selectmen) attesting that the submission constitutes the

municipality's affordable housing plan and requesting plan approval.<sup>1</sup> Within 90 days of the submission of a complete affordable housing plan, the Department will approve or disapprove the plan.

If a municipality submits a plan the Department finds incomplete, DHCD will notify the community of the materials that are missing. DHCD's 90-day approval process will not begin until a complete plan is received. If the Department disapproves a plan, it will notify the community as to the reasons for disapproval.

Communities may revise and resubmit a plan in response to disapproval. Communities may also amend a plan at any time. Resubmissions and amendments must be accompanied by an updated submission by the chief elected official, as above.

Communities should submit the plan to:

Jane Wallis Gumble, Director  
MA Department of Housing and Community Development  
Office of Sustainable Development  
1 Congress Street  
Boston, MA 02114  
[MaryJane.Gandolfo@ocd.state.ma.us](mailto:MaryJane.Gandolfo@ocd.state.ma.us)

The Department would prefer an electronic copy of the plan for its review, submitted via e-mail attachment or on disc.

#### **4. Certification of Compliance with Affordable Housing Plans**

Communities with an approved affordable housing plan may request DHCD certification of compliance with their plan by submitting evidence that housing units have been produced in the calendar year for which certification is requested that are eligible to be counted on the Subsidized Housing Inventory and total at least  $\frac{3}{4}$  of one percent of the total housing units in the community. This can be demonstrated by submitting a description of the units including their location, and copies of final comprehensive permits and/or building permits for the required units.<sup>2</sup>

The Department will evaluate whether the housing units identified have been produced in accordance with the approved affordable housing plan for the community. If the units have been produced in accordance with the plan and the number of units is at least  $\frac{3}{4}$  of one percent of the community's total year round housing units, DHCD will certify that the community is in compliance with its plan. DHCD will determine whether a community is in compliance with its plan within 30 days of receiving a community request for certification.

For the initial certification period, DHCD will also accept any qualifying housing units (eligible to be counted on the Subsidized Housing Inventory)<sup>3</sup> produced between August 1, 2002 and December 31,

---

<sup>1</sup> The Chief Executive Officer may submit on behalf of the municipality, if so authorized by local charter.

<sup>2</sup> The form used for including units on the Subsidized Housing Inventory can be used. See Attachment.

<sup>3</sup> Regulations allow housing units to be added to the Subsidized Housing Inventory when a comprehensive permit becomes final. Units authorized under comprehensive permits shall be credited toward the annual increase when the comprehensive permit becomes final. However, units authorized by a comprehensive permit are removed from the

2002 regardless of when the certification is requested. In subsequent certifications, compliance will be determined based on production of qualifying housing units within the calendar year for which certification is requested.

Communities should submit certification requests to:

MA Department of Housing and Community Development  
Office of Sustainable Development  
1 Congress Street  
Boston, MA 02114  
[MaryJane.Gandolfo@ocd.state.ma.us](mailto:MaryJane.Gandolfo@ocd.state.ma.us)

### **Sample Chronology**

#### ***March 15, 2003***

Step 1: Completion and submittal of affordable housing plan to DHCD.

Community X completes an affordable housing plan and submits it to DHCD for approval.

#### Prior to June 15, 2003 (within 90 days)

Step 2: DHCD review period.

DHCD determines that the plan is complete, reviews it and approves Community X's housing plan and notifies the community.

#### November 8, 2003

Step 3: Municipal request for certification of compliance with plan for first year.

Community X requests DHCD certification of compliance with their plan based on permitting and/or production of units within calendar year 2003, that are

- Eligible to be counted on the Subsidized Housing Inventory
- In accordance with the approved plan, and
- Total more than  $\frac{3}{4}$  of one percent of their total housing units.

#### Prior to December 8, 2003 (within 30 days)

Step 4: DHCD certification review period for first year.

DHCD certifies that Community X is in compliance with its approved plan based on production of housing within calendar year 2003 and from August 1, 2002 through December 31, 2002, retroactive to November 8, 2003 and effective until November 7, 2004.

#### January 2, 2004

The Zoning Board of Appeals in Community X denies an applicant for a comprehensive permit based upon their certification. If appealed, the HAC will uphold the denial.

#### May 11, and June 6, 2004

The ZBA in Community X approves two comprehensive permits for projects with units that are eligible for inclusion on the inventory and that total at least  $\frac{3}{4}$  of one percent of their total housing units.

---

Subsidized Housing Inventory if a building permit has not been issued within one year from the date the comprehensive permit becomes final.



November 8, 2004

Step 5: Municipal request for certification of compliance with plan for second year. Community X requests DHCD certification of compliance with their plan based on permitting and/or production of units within calendar year 2004 that are

- Eligible to be counted on the Subsidized Housing Inventory
- In accordance with the approved plan, and
- Total more than  $\frac{3}{4}$  of one percent of their total housing units.

Prior to December 8, 2004 (within 30 days)

Step 6: DHCD certification review for second year.

DHCD certifies that Community X is in compliance with its approved plan based on production of housing within calendar year 2004, retroactive to November 8, 2004 and effective until November 7, 2005.

**5. Certified Communities' Authority**

A decision by a Zoning Board of Appeals to deny a comprehensive permit application shall be "consistent with local needs" and the denial will be upheld by the Housing Appeals Committee in a community that has been certified as being in compliance with its affordable housing plan at the time of the denial.

This authority shall continue for as long as a community has certification based on the production of low and moderate-income housing units of at least  $\frac{3}{4}$  of one percent of the total housing units in the community. In a community certified to have produced 1.5 percent, the Board's authority to deny comprehensive permits will be valid for two years.

Certification by the Department takes effect immediately, and may affect pending and future applications to the Board.

Attachments:

Guide to Adding Units/New Units Form

Subsidized Housing Inventory

Spreadsheet illustrating .75% and 1.5% number of units per community

**CHAPTER 40B SUBSIDIZED HOUSING INVENTORY 2001**  
**NOTES TO ACCOMPANY DHCD'S CHAPTER 40B SUBSIDIZED HOUSING INVENTORY**

1. Introduction - This Inventory contains the number and percentage of low- or moderate-income housing units for purposes of Massachusetts General Laws Chapter 40B, §§ 20-23 (also known as the Comprehensive Permit). It **does not** list all subsidized, low- or moderate-income housing in the community (Units obtained using a Section 8 mobile voucher or a Massachusetts MRVP voucher do not qualify for the inventory). Chapter 40B authorizes a housing agency or developer to obtain a single comprehensive permit for the construction of subsidized low- or moderate-income housing. If a community in which less than 10% of its total year-round housing stock is subsidized low- or moderate-income housing, denies a comprehensive permit application, or imposes conditions that make a project uneconomic, the developer may appeal to the state Housing Appeals Committee for review of the local action. Under 760 CMR 31.04, DHCD is responsible for maintaining a Chapter 40B Subsidized Housing Inventory for purposes of determining each community's percentage of subsidized low- and moderate-income housing.

2. Low- or Moderate-Income Housing - The column in this Inventory labeled "Chapter 40B Units" shows the number of housing units which count toward the municipality's 10% threshold of low- or moderate-income housing. This includes both subsidized affordable units and market-rate units in certain eligible subsidized rental developments (If at least 25% of the units in a rental development are restricted to occupancy and occupied by individuals and families below 80% of median, the units in the entire development are counted toward the community's eligible "Chapter 40B Units").

3. Use of the 2000 Census: The column in this Inventory labeled "Percent Subsidized 2000 Base" shows the municipality's percentage of subsidized low- or moderate-income housing. This percentage has been calculated by dividing the number of Chapter 40B units by the number of "2000 Year-Round Housing Units" reported in the 2000 decennial census of the U.S. Department of Commerce, Bureau of the Census. While the Chapter 40B Unit figures and resulting percentages are presumed correct for purposes of Chapter 40B, a local zoning board of appeals or a developer may submit to DHCD more recent evidence or evidence which it believes is more accurate.

4. Source Data - Data for this Inventory is provided by DHCD, MassHousing, U.S. Department of Housing and Urban Development (HUD), USDA Rural Development, Massachusetts Housing Partnership (MHP) and various other federal and state agencies. The data in this Inventory are summary data based upon a project-by-project listing maintained by DHCD. Both this Inventory and the project listing upon which it is based replace the 1997 Chapter 40B Subsidized Housing.

5. Qualifying Units and Programs - Generally, housing affordable by low- or moderate-income individuals or families with long-term restrictions that ensure that it will remain affordable is counted toward a municipality's 10% threshold and included in this inventory. As a guide for the public, DHCD publishes a listing of Chapter 40B Low- or Moderate-Income Housing Programs, which lists programs that normally would qualify under the statute. (See Appendix A.) Though the listing is generally accurate as a reference, it is not conclusive as to whether individual projects or units will be counted toward the 10% goal.

DHCD, in consultation with the Housing Appeals Committee (HAC), has developed the criteria below for determining what housing is eligible to be counted and included in this Inventory. These criteria are based upon the statutory definition of low- or moderate-income housing, which is "any housing subsidized by the federal or state government under any program to assist the construction of low- or moderate-income housing as defined in the applicable federal or state statute, whether built or operated by any public agency or any nonprofit or limited divided organization." G.L. c. 40B, §20; also see 760 CMR 30.02. They also reflect policy decisions implementing the recommendations in the April, 1989 final report of the Special Legislative Commission Relative to Low- and Moderate-Income Housing Provisions. See 760 CMR 45.01.

**A. Eligible Development – A PROJECT MUST MEET THE FOLLOWING CRITERIA TO BE ELIGIBLE FOR THE CHAPTER 40B SUBSIDIZED HOUSING INVENTORY:**

- (1) it has been approved or is approvable by the **federal or state government** under any program to assist the construction or substantial rehabilitation of housing which is **affordable to people or**

**families with incomes no higher than 80% of the median income** for the MSA, PMSA, or the non-metropolitan county in which the unit is located, (see, e.g., 42 U.S.C. § 5302(a)(20))

(2) 25% or more of the units in the development,<sup>1</sup> are affordable, as defined above, and subject to **use restrictions or re-sale controls to preserve its affordability as follows:**

(a) **for thirty years or longer** from the date of subsidy approval or construction for new construction, (new units occupied before Oct. 1, 2001 can have a 15-year deed restriction to qualify for the inventory)

(b) **for fifteen years or longer** from the date of subsidy approval or completion for substantial rehabilitation, (rehabilitated units occupied before Oct. 1, 2001 can have a 5-year deed restriction to qualify for the inventory)

(3) it is subject to, or will be subject to a Regulatory Agreement or the equivalent between the developer and the subsidizing agency which adequately specifies material provisions for affordability, monitoring and enforcement.

(4) it is subject to or will be subject to an Affirmative Fair Marketing Plan approved by the subsidizing agency.

**IF A DEVELOPMENT IN YOUR COMMUNITY MEETS THOSE CRITERIA BUT DOES NOT HAVE A FEDERAL OR STATE SUBSIDY, YOU MAY APPLY TO THE LOCAL INITIATIVES PROGRAM (LIP) UNITS ONLY. IF LIP APPROVAL IS GRANTED, THE APPROVED LOCAL INITIATIVE UNITS WILL BE ADDED TO THE INVENTORY.**

For more information about LIP, call the Department of Housing and Community Development, Division of Private Housing at (617)727-7824.

#### B. Counting of Units

(1) Units in Eligible Developments - Unless the regulations governing the subsidy program provide otherwise, housing in an eligible development is counted as follows:

(a) Rental Units - All rental housing units are counted as low- or moderate-income housing (i.e., included in this Inventory).

(b) Ownership Units - Only those ownership units which are affordable and restricted, as defined in § A(1) and A(2) above, are counted as subsidized low- or moderate-income housing and included in this Inventory.

<sup>1</sup> Alternatively, 20% of the units may be set-aside for those with incomes equal to or less than 50% of the median income.

#### Examples

i) In LIP **rental** developments, pursuant to 760 CMR 45.06(3), if a total of 20 units are built and nine are "affordable" all twenty units are counted.

ii) In LIP **homeownership** developments, pursuant to 760 CMR 45.06(3), if a total of 20 units are built and nine are "affordable" only the nine affordable units are counted.

## APPENDIX A

---

(2) Local Initiative Units - Local Initiative Units as defined by the LIP regulations in 760 CMR 45.03 (even though not in an eligible development) are counted as low- or moderate-income housing pursuant to 760 CMR 45.06(1).

### C. Time Limitations

(1) Inception - Units become eligible to be counted when they receive a comprehensive permit, a building permit, or become available for occupancy. 760 CMR 31.04(1)(a).

(2) Discontinuation - Unless the regulations governing the subsidy program provide otherwise, units are counted as low- and moderate-income housing for the period for which affordability is preserved (lock-in period) as described in the Regulatory Agreement or, if there is no Regulatory Agreement, in use restrictions, re-sale controls or similar legally binding documents. If an initial lock-in period is extended, the units continue to be counted during the extended period. If the use restrictions or re-sale controls are released or become void in a manner consistent with the subsidy program, the units continue to be counted for the remainder of the lock-in period.

### **Examples**

(a) HOP re-sale controls are intended to be in effect in perpetuity. If an eligible purchaser cannot be located for a HOP affordable unit and the re-sale controls lapse in accordance with the program, the unit continues to be counted.

(b) LIP use restrictions are intended to be in effect in perpetuity. Nevertheless if they lapse, the unit is no longer counted because of the provisions of the program regulations. See 760 CMR 45.06 (1) , 45.06 (2).

6. Local Initiative Program - Affordable housing which is developed locally by housing trusts, land trusts, or other mechanisms, if subject to long-term affordability restrictions, will usually qualify for the LIP program. Affordable units may be counted either as individual Local Initiative Units or as part of an approved LIP project, as previously described in note 5.

7. Accuracy - This Inventory is based upon the most accurate information available to DHCD as of the time of publication. Nevertheless, because of the diversity of sources drawn upon and multiple subsidies for some developments, inaccuracies may occur, not only in this Inventory, but also in previous versions. Therefore, an increase or decrease in units in a particular community does not necessarily mean that the community gained or lost units, but may indicate corrections to the Inventory.

Suggested corrections to the Inventory may be submitted in writing by the municipality, a developer, or a member of the public to DHCD, 1 Congress Street, 10<sup>th</sup> Floor, Boston, MA 02114. Attention: Chapter 40B Subsidized Housing Inventory. Clerical errors will be noted immediately, and corrected figures will be issued with the next revision of this Inventory.

Housing subsidized by programs which normally do not qualify under Chapter 40B (i.e., those in Category II of the listing) in most cases will be counted only if the units are independently approved as Local Initiative Units by DHCD under the Local Initiative Program (LIP), which requires long-term affordability restrictions and other requirements previously described in note 5.

In exceptional cases, the DHCD may determine that housing subsidized by a Category II program should be counted or that housing subsidized by a Category I program should not. Such a determination requires complex analysis of DHCD policy (e.g., the criteria contained in these notes), regulations, and statutes, and will be made by DHCD on a case by case basis upon consideration of all information available about the units and development. Meeting the criteria outlined in note 5 does not guarantee a positive determination. Decisions on such matters by DHCD are subject to review pursuant to 760 CMR 31.04 (1) (a).

APPENDIX A

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT

Listing of Chapter 40B Eligible Housing Programs

2001

**Category I** - The following housing programs are low- or moderate-income housing programs<sup>1</sup> for purposes of G.L. c.40B, §§ 20-30, 760 CMR 30.02(k), 31.04 (1)(a).

**Eligible Active Programs**

**A. State Programs**

DHCD Chapter 689 (Special Needs Housing)

DHCD Chapter 167 (Special Needs Housing)

DHCD Chapter 705 (Family Low Income Housing)

DHCD Chapter 667 (Elderly/Handicapped Low Income Housing)

DHCD Low Income Housing Tax Credit Program

DHCD Affordable Housing Trust (AHT) (units affordable to people or families with incomes no higher than 80% of the median income)

DHCD Housing Innovations Fund (HIF) (Non-transitional housing only)

DHCD Housing Stabilization Fund (HSF)

DHCD Local Initiative Program (LIP)

DHCD Local Initiative Program (LIP) Units Only<sup>2</sup>

DHCD Individual Self Sufficiency Program (ISSI)

DMR Group Homes

## APPENDIX A

---

DMH Group Homes

EOHHS Facilities Consolidation Fund (FCF)

DMR/DMH community-based housing (some uses)

Massachusetts Housing Partnership Fund (MHP)

MassHousing 80/20 Rental Housing

MassHousing Elder 80/20

MassHousing Elder Choice

MassHousing Expanding Rental Opportunities (ERA)

MassHousing Housing Starts

### **B. Federal Programs**<sup>3</sup>

FHLB Affordable Housing Program

FHLB New England Fund (units will count if they meet affordability standards)

HUD HOME Program (Rental Production, Project-Based Homeownership, Homeowner Rehab)

HUD Section 811 (Supportive Housing for Persons with Disabilities)

HUD Low Income Housing Tax Credit Program (LIHTC)

HUD Section 202 (Supportive Housing for the Elderly)

HUD Section 8 Moderate Rehabilitation Single Room Occupancy (SRO) Program

HUD Section 8 Project-Based Rental Certificate Program

HUD Shelter Plus Care (Project-Based Rental Assistance and SRO-Based Assistance only)

HUD CDBG Housing Development Support Program (HDSP) (most uses)

HUD CDBG Community Development Fund (CDF) (non-entitlement communities - some uses)

HUD Enhanced Voucher (Sticky)

USDA Rural Development Section 515 program

**Inactive Eligible Programs**

**A. Federal Programs**

Chapter 200 (Veterans' Housing)

Chapter 13A Interest Reduction Subsidy Program

MassHousing Multi-Family Rental

HUD Section 221(d)(3), 221(d)(4)

HUD Section 231

HUD Section 236

HUD Section 8 New Construction

HUD Section 8 Substantial Program

HUD Section 8 Moderate Rehabilitation Program

**B. State Programs**

HOP (Homeownership Opportunity Program)<sup>4</sup>

R-DAL (Rental Development Action Loan)

SHARP (State Housing Assistance for Rental Production)

TELLER ( Tax Exempt Local Loans to Encourage Rental Housing)

Massachusetts Government Land Bank Residential Housing

**Category II** - The following programs, as well as programs not appearing anywhere on this listing<sup>5</sup> are not usually deemed low- or moderate-income housing programs for purposes of G.L. c. 40B§ 20-23, 760 CMR 30.02(k), 31.04 (1)(a).<sup>6</sup>

**Ineligible Programs and Housing Types**

DHCD Alternative Housing Voucher Program (AHVP)

DHCD CDAG (Community Development Action Grant)

DHCD Massachusetts Rental Voucher Program (formerly Chapter 707 Program)

DHCD Mass Rental Voucher Program Program-Moderate Rehabilitation Program (project-based vouchers)

DHCD Soft Second Loan Program

EOHHS Shelter Plus Care (Tenant-Based Rental Assistance, Sponsor-Based Rental Assistance)

HUD Emergency Shelter Grants Program

HUD HoDAG (Housing Development Action Grant)

HUD HOME Program (Tenant Based Rental Assistance, Homeownership Purchaser Based)

HUD CDBG (entitlement communities – units not deed restricted for at least 15 years)

HUD HOPE (Home Ownership for People Everywhere)

HUD Section 8 Rental Certificate Program

HUD Section 8 Rental Voucher Program

HUD Section 8 Loan Management Set-Aside Program

HUD Section 8 Property Disposition Set-Aside Program

HUD Section 221(d)(2)

HUD UDAG (Urban Development Action Grant)

Manufactured Housing

Military Housing

Transitional Housing

Shelters



## Prisons

### USDA Rural Development Section 502 Program

<sup>1</sup> This listing does not provide a conclusive indication as to whether any housing development or housing unit is within the statutory definition of low- or moderate-income housing. Though this listing is generally accurate as a reference and is used by DHCD in making such determinations, the determinations are made as a formal matter under the criteria described in the notes to the DHCD Chapter 40B Subsidized Housing Inventory. Pursuant to 760 CMR 31.04(1)(a), such determinations are subject to review by the Housing Appeals Committee in the context of formal appeals concerning particular housing proposals. In addition, because of program changes and new programs, this list will be updated periodically to insure its accuracy. If you are aware of changes which should be reflected on the list, please contact the DHCD Director's Office at (617) 727-7765.

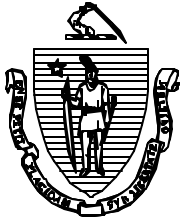
<sup>2</sup> Affordable housing which is developed locally by housing trusts, land trusts, or other mechanisms, and contains long-term affordability restrictions, will usually qualify for the LIP program. If the development is granted LIP approval, it will be counted as low- and moderate-income housing in the DHCD Chapter 40B Subsidized Housing Inventory.

<sup>3</sup> HUD is the U.S. Dept. of Housing and Urban Development; FHLB is the Federal Home Loan Bank; USDA Rural Development was the Farmers' Home Administration.

<sup>4</sup> New private HOP projects will qualify for the Chapter 40B Subsidized Housing Inventory.

<sup>5</sup> Because of the large number of programs related to housing (e.g. HUD, Program of HUD - 1992, which describes over 70 programs), this listing does not attempt to be all-inclusive. Rather, it lists programs which are most likely to be mistakenly considered within the Chapter 40B definition of low- or moderate-income housing.

<sup>6</sup> Housing subsidized by programs in this category in most cases will be counted as low- and moderate-income housing in the DHCD Chapter 40B Subsidized Housing Inventory only if the development is independently approved under the Local Initiative Program (LIP), which includes the long-term affordability restrictions and other requirements described in the Inventory.



Commonwealth of Massachusetts  
**DEPARTMENT OF HOUSING &  
COMMUNITY DEVELOPMENT**

Mitt Romney, Governor ♦ Kerry Healey, Lt. Governor ♦ Jane Wallis Gumble, Director

**Guidelines for Housing Programs  
in Which Funding is Provided Through a Non-Governmental Entity**

**1. Summary**

These guidelines are established for housing programs where funding is provided by a non-governmental entity in accordance with 760 CMR 31.01 2(g) and 31.09 (3) for the administration of low or moderate income housing that is developed with a comprehensive permit using the program of a subsidy agency that uses non-governmental entities to provide the funding. These guidelines are intended to facilitate production of such housing subsidized by eligible subsidy agencies that do not offer funding or financing directly, but that provide funding through private financial institutions. The Federal Home Loan Bank of Boston is one such eligible subsidy agency, which at this time provides funding through member banks for its New England Fund for production of low or moderate-income housing.

**2. Background**

M.G.L. Chapter 40B, sections 20-23 (also known as Chapter 774 of the Acts of 1969 or the Comprehensive Permit Law) created a local process for granting "comprehensive permits" for the construction of subsidized low or moderate income housing. These permits, which may supersede local requirements and regulations including zoning, are granted on a case-by-case basis by local zoning boards of appeals (ZBAs) following a public hearing. In a city or town where less than ten percent of the housing stock is low or moderate income housing (as defined in section 21 and the Department's regulations), the denial of a comprehensive permit application by a ZBA or the imposition of conditions that render a proposed low or moderate income housing development uneconomic may generally be appealed to the state Housing Appeals Committee.

Chapter 40B defines low and moderate income housing as "any housing subsidized by the federal or state government under any program to assist the construction of low or moderate income housing". "Low or moderate income housing" provides housing to households earning no more than 80 percent of the area median income.

In 1998, the Housing Appeals Committee (HAC) determined in a decision known as the Stuborn Case that the Federal Home Loan Bank of Boston (FHLBB, also referred to as a "subsidy agency") is a subsidy agency authorized legislatively, which performs a governmental function and which is supervised by a federal agency (the Federal Housing Finance Board). The HAC ruled that the FHLBB's New England Fund ("NEF") program is a qualifying low or moderate income-housing program, which requires that no less than 25% of the housing must serve households earning less than 80% of area median income, guaranteed by a long-term use restriction. The NEF program provides its funding through NEF member banks (also referred to as "non-governmental entities" in these guidelines.)

Unlike conventional housing subsidy programs, in which a state or federal agency administers and approves every aspect of financing, design and construction, the FHLBB does not impose such oversight in the New England Fund. Therefore, in the NEF program, many of these decisions were left to the local ZBA.

The real estate market in the late 1990s and thereafter made real estate development financially attractive. Developers seeking to overcome local barriers to low or moderate-income housing turned to the flexibility offered by the Comprehensive Permit Law. As a result of the Stuborn Case, the NEF became a funding source and NEF member banks began issuing site approval letters for low or moderate-income housing developments. This resulted in multiple applications to many ZBAs for comprehensive permits. Most municipalities did not have local standards that detailed reasonable requirements for low or moderate-income housing development, and many did not have the capacity to undertake the responsibilities of administering such housing once built.

Accordingly, DHCD deems the New England Fund to be a qualifying program and promulgated 760 CMR 31.01 (2)(g) which states

If project funding is provided through a non-governmental entity, a public or quasi-public entity authorized by the Department (DHCD) shall make the determination of Project Eligibility (Site Approval). The designated entity that issued the Project Eligibility (Site Approval) determination shall administer the project thereafter as specified in program guidelines issued by the Department...”

and 760 CMR 31.09(3) which states in pertinent part:

...If project funding is provided through a non-governmental entity, the state agency providing the determination of Project Eligibility (Site Approval), shall issue the final approval.

These guidelines are the “program guidelines” referenced in 760 CMR 31.01(2)(g).

### **3. Purpose**

The need for affordable housing is as acute today as it was in 1969 when Chapter 40B, the Comprehensive Permit Law, was enacted. The purpose of Chapter 40B is to stimulate the production of affordable housing in conjunction with a state or federal subsidy program that provides proper safeguards and controls. Resources to assist in the development of affordable housing are limited, and those that are provided by, or as in the case of the FHLBB, used in conjunction with subsidy agencies, are essential to the production of affordable housing. These guidelines are intended to establish a procedure to allow participation by non-governmental entities and leverage their resources, while ensuring that the process by which developments are negotiated, built, sold and remain affordable are consistent with the spirit of the statute.

These guidelines set out procedures to enable development of low and moderate income housing using funding provided through non-governmental entities and utilizing the flexible zoning and local

approval process provided by Chapter 40B. 760 CMR 31.09(3) requires that the Department identify qualified public or quasi-public agency(-ies) to serve as the Project Administrator discussed in these guidelines. These guidelines ensure that a substantial percentage of units will serve low or moderate income households, that the units will be subject to long-term use restrictions, that units will be openly and fairly marketed, that developers will realize a reasonable return on their investment, and that the development will be monitored over the term of the use restriction by the Project Administrator.

The role of the Project Administrator is to facilitate and guide projects developed in conjunction with non-governmental entities. These guidelines are intended to establish a process to ensure fair and open negotiation, and quality of construction. The role of the Project Administrator is not intended to supersede the jurisdiction of the Housing Appeals Committee or be a substitute for decisions more appropriately made as part of a negotiation between a developer and a municipality. It is intended rather that the Project Administrator facilitate a process that benefits and serves the needs of both the municipality and the developer.

These guidelines will govern administration of housing programs in which funding is provided by a non-governmental entity. To the extent that these guidelines are silent on a particular matter, the policy of the Project Administrator will prevail. Prior to approving an entity as a Project Administrator, DHCD will review relevant Project Administrator policies for its approval. To the extent that a relevant policy of a Project Administrator changes, the Project Administrator will submit the proposed policy to DHCD for its review and approval. A new policy will not take effect in housing programs in which funding is provided by a non-governmental entity until DHCD has granted such approval.

#### **4. General Requirements**

In order to qualify for a comprehensive permit where funding is provided through a non-governmental entity, a project must meet the following minimum requirements:

- (1) At least 25 percent of the units in the proposed project must be affordable to households earning a maximum of 80 percent of area median household income; or alternatively, at least 20 percent of the units in the proposed project must be affordable to households earning a maximum of 50 percent of area median income; there also shall be reasonable asset limits for such households;
- (2) The affordable units must be subject to a long term use restriction enforceable under a regulatory agreement with a Project Administrator in a form approved by DHCD (see "Regulatory Agreements");
- (3) The affordable units must be marketed through a fair and equitable process in compliance with state and federal fair housing laws, and a lottery process as described in these guidelines generally should be used;
- (4) The Project Administrator shall ensure supervision of the project during construction; and
- (5) Provision shall be made for effective monitoring and enforcement of the use restriction and regulatory agreement during the term of affordability.

## **5. Application for Project Eligibility (Site Approval)**

Where a developer seeks a comprehensive permit and the project funding will be provided through a non-governmental entity, a public or quasi-public entity authorized by DHCD (the Project Administrator) shall make the determination of Project Eligibility (Site Approval). DHCD shall maintain a public list of Project Administrators. A developer may choose the Project Administrator to which it applies.

An application for a determination of project eligibility must include the name and address of the applicant, the address of the site and site description, including its characteristics and infrastructure, the number, size and type of housing units proposed, the name of the housing program under which project eligibility is sought, relevant details of the particular project, including the percentage of units for low and moderate income households, income and asset eligibility standards, total land area and units per acre, the duration of the use restrictions, the limited dividend status of the developer, and other information required by the Project Administrator.

## **6. Determination of Project Eligibility (Site Approval)**

In determining Project Eligibility (Site Approval) the Project Administrator must make the following findings:

- 1) that the proposed project appears generally eligible under the requirements of the housing program, subject to final review of eligibility and to final approval;
- 2) that the Project Administrator has performed an on-site inspection of the site and has reviewed pertinent information submitted by the applicant, the municipality, and others (if any);
- 3) that the proposed housing design and land use plan are generally appropriate for the site and for the site location in which the site is located;
- 4) that the proposed project appears financially feasible within the housing market in which it will be situated (based on comparable rentals and/or sales figures);
- 5) that an initial pro forma has been reviewed and the project appears financially feasible on the basis of estimated development costs (there shall be a presumption that the project is financially feasible once the preliminary funding approval has been granted by the non-governmental entity);
- 6) that the proposed financing is reasonable and profit is properly limited; and
- 7) that the developer is financially responsible and meets the general eligibility standards of the housing program.

In addition to the foregoing, a Project Administrator may consider the following in making a determination of project eligibility:

- overall density and size
- the degree of affordability
- environmental impact (including principles of “smart growth”)
- community impact and consistency with local housing need
- impact of other pending applications for housing development

The purpose of low or moderate-income housing development programs is to address state, regional and local housing needs. There is a critical need in the Commonwealth for all types of housing, but particularly for family and special needs housing. The Project Administrator shall encourage development of such housing.

## **7. Process for Determining Project Eligibility (Site Approval)**

In conjunction with the comment period pursuant to 760 CMR 31.01(2) (d), a site visit and project review meeting will be scheduled by the Project Administrator which is considering an application for a determination of Project Eligibility (Site Approval). The Project Administrator may invite the developer and representatives of the municipality to participate in the site visit and project review meeting.

The purpose of the site visit is to help develop a full understanding of the developer's proposal and how it relates to the site, neighborhood and local conditions. The project review meeting is a forum in which to discuss:

- (1) concerns related to the proposed project,
- (2) issues that could assist the developer in meeting the requirements of the program and addressing legitimate concerns of the municipality, and
- (3) information that will help the municipality understand the nature and scope of the proposed project and key issues that the Project Administrator may consider as part of its determination of Project Eligibility (Site Approval).

These issues may include (but may not be limited to) the issues set out in the prior section. Additional scrutiny may be given to operating budgets, environmental issues, land valuation, marketing, financing, development scheduling, developer qualifications, handicapped access and/or provision for the disabled and other concerns related to the project.

In issuing a determination of Project Eligibility (Site Approval) the Project Administrator may require revisions or amendments to the project in order to meet program objectives. The revised or amended project, as so approved, shall thereafter be considered the project. The Project Administrator shall state the name of the state or federal low-income housing construction program under which it has made its determination of Project Eligibility (Site Approval).

## **8. Applications for Comprehensive Permits**

After the Project Administrator has issued a determination of Project Eligibility (Site Approval) for a project, the developer shall submit a copy to the non-governmental entity from which the developer will seek funding. This entity shall make a determination as to whether it will provide preliminary funding approval pursuant to the state or federal low-income housing construction program specified in the determination.

Thereafter the developer may apply for a comprehensive permit with the ZBA having jurisdiction. The application shall meet the requirements of 760 CMR 31.02 (2). At the time of application, the developer shall provide a copy of the application to the Project Administrator. The application to the ZBA shall include the following:

- (1) Determination of Project Eligibility (Site Approval).
- (2) Documentation of the developer's interest in the site (i.e., a deed, option or purchase and sale agreement).
- (3) A site plan showing the location of the development in the municipality, topographical changes, including roads, parking, grade changes, location and footprints of buildings and other site changes.
- (4) Information regarding the relationship of the project with local or regional plans.
- (5) Elevations (or sample building types) and floor plans (or sample floor plans).
- (6) Information on rents and/or sales prices of affordable units and market units, the number, bedroom size and location of affordable and market units.

The Project Administrator shall be kept informed by the developer about the progress of the hearing on the application before the ZBA. In the event revisions or amendments to the project are required or requested by the ZBA, and they are reasonable and appropriate, the Project Administrator shall approve any such revisions or amendments prior to or as part of its final approval.

## **9. Final Approval**

Following the issuance of a comprehensive permit and prior to construction, the developer shall submit revised, preliminary plans to the Project Administrator reflecting any revisions or amendments to the project required by the comprehensive permit or otherwise necessary for the financing and construction of the project. With these plans the developer shall submit a signed regulatory agreement in the form prescribed by the Project Administrator which shall ensure compliance with program requirements and the requirements of these guidelines, including monitoring of construction, imposition of effective use restrictions, monitoring of compliance with the provisions of the use restriction and regulatory agreement during the term of affordability, and effective enforcement of such provisions in the event of noncompliance.

The Project Administrator shall grant final approval to the project if the project, as it may have been revised and amended, still meets the program requirements and financing standards set out above pursuant to which the Determination of Project Eligibility (Site Approval) was made. Issuance of a comprehensive permit by the Housing Appeals Committee shall be considered evidence of compliance with program requirements with respect to matters of local concern.

Following issuance of final approval, the developer may secure a building permit and any other necessary approvals and permits (not waived in the comprehensive permit) in order to commence construction. During construction the Project Administrator shall monitor compliance in the manner set out in the Regulatory Agreement. In the event of any noncompliance with the plans, financial undertakings or other matters in the Regulatory Agreement, upon notice from the Project Administrator, the developer shall cure any such noncompliance forthwith. Sanctions for noncompliance may be provided in the Regulatory Agreement. In the event of noncompliance the developer shall pay all of the Project Administrator's costs, including reasonable attorneys' fees, in securing a cure for such noncompliance.

## **10. Minimum Design and Construction Standards**

Low or moderate-income housing units in a project should not be readily identifiable as such. However, the Project Administrator may approve developments that reasonably balance the provision of decent, affordable housing with the site and market conditions associated with the specific development proposal. For example, while affordable units may not be the same size as market-rate homes, they should be of similar style and have a uniform exterior quality for both affordable and market units. The affordable units should be reasonably interspersed with the market units.

In the event the Project Administrator permits market rate units to be distinguishable in size or in appearance from affordable units the developer and Project Administrator shall make an effort, insofar as financially feasible, to provide for an increased number of affordable units, increased affordability of the units for low or moderate income households, increased unit size of the affordable units or a combination of these factors. The Project Administrator shall determine whether such an increase warrants the differential in size or in appearance. Even if affordable units are distinguishable these units shall be fully integrated into and interspersed in the development so as to prevent easy identification. For example, in projects comprised of detached single-family dwellings, this result could be accomplished by situating affordable units for two families (with a project total of affordable units higher than the minimum required) within structures that have comparable exteriors to the single-family market rate units.

While the low and moderate-income units need not be given the same interior finishes and amenities as the market rate units, the interiors shall be of good quality. Interiors shall be completely finished prior to occupancy.

Development proposals that have low and moderate-income units with two or more bedrooms are encouraged. Studio units or one-bedroom units may be approved where consistent with the type of housing proposed and the regional housing need. Where site and location are appropriate for families with children, it is recommended that at least 50% of the low and moderate-income units be for families or large households and have three or more bedrooms.

Housing developed through the program must comply not only with the State Sanitary and Building Codes, but also with other state building and environmental regulations, and (to the degree not exempted by a comprehensive permit) with all applicable local codes, ordinances and bylaws. In the event that the development is built in phases, each phase shall contain a proportionate number of affordable and market units.

## **11. Environmental Standards**

It is important for developers to bear in mind that there is consistency between G.L. c. 40B and meeting environmental concerns. (G.L. c. 40B § 20). Consistency with local needs requires a balancing between the regional need for affordable housing and, among other factors, "...environment, design, open space, and other matters of local concern." 760 CMR 31.06(2).

For new construction projects, developers are encouraged to pursue development plans that promote quality residential development in already developed areas including "infill" development and development near transportation centers. In communities with significant undeveloped land and incomplete infrastructure, developers are encouraged to apply land planning methods that



minimize environmental impacts while increasing housing density beyond that normally created under conventional zoning.

Creative land use designs which reduce infrastructure costs and minimize adverse environmental impacts and/or maximize resident recreational areas and meaningful open space shall be pursued whenever reasonably possible.

## 12. Regulatory Agreements

There shall be a regulatory agreement in the form approved or specified by the Department in which a developer agrees to develop low or moderate income housing in accordance with use restrictions. These use restrictions may be included as part of the regulatory agreement for rental and cooperative projects. For rental or cooperative housing, the regulatory agreement shall require a developer/owner/manager to operate and manage the housing in accordance with the use restrictions and other material terms and shall provide for effective monitoring, administration and enforcement of the regulatory agreement during the term of affordability. For ownership housing, the regulatory agreement shall specify the terms of development and require the developer/owner/manager to impose an approved use restriction on each low or moderate-income unit at the time of initial sale of the unit. There shall be a provision in the regulatory agreement in which the developer shall agree to the following:

- (a) For rental housing, developers fees, overhead, profits, dividends and any other distributions to developers, development consultants, partners or legal or beneficial owners shall be subject to limitations as follows:

**Distributions from Capital Sources:** Payment of fees and profits will be limited to no more than ten percent of total development costs (see Section 17) net of (i) such fees and profits; and (ii) any working capital or reserves intended for property operations.

**Distributions from Operations:** Commencing upon the development's initial occupancy and each year thereafter, annual dividend distributions will be limited to ten percent of the owner's equity in the project. Owner's equity, which may be revised from time to time pursuant to terms of the Regulatory Agreement, shall consist of the difference between the appraised as-built value of the development and the sum of any public equity and secured debt on the property. Public equity includes HOME, CDBG, linkage, or other public funds, whether structured as a grant or soft loan.

Distributions shall be permitted with respect to each fiscal year of the project commencing on the date of initial occupancy only after all current and owed-to-date project expenses have been paid and reserves, then due and owing, have been funded. A determination of the amounts available for distribution shall further be subject to the terms of the Regulatory Agreement concerning allocations to the Distribution Account, as therein defined.

In the event that distributions made in any year are less than the maximum percentage of equity permitted with respect to any such year, subject to the provisions governing contributions to the Distribution Account set forth in the Regulatory Agreement, the

developer may accrue the deficiency with interest at the rate of 5% per annum, and cumulative deficiencies may be distributed in accordance with the provisions herein up to the maximum distribution allowed by law.

- (b) For ownership housing, to limit profit to all such partners or owners to no more than twenty percent of total allowable development costs, and such other sums as the Project Administrator may determine constitute a developer's contribution to the project, provided that calculation of total allowable development costs shall not include any fee paid to the developer.

By such a provision in the regulatory agreement the developer shall be deemed a "limited dividend organization" meeting the requirements in M.G.L. Chapter 40B Section 21.

The regulatory agreement shall be signed by the developer, the Project Administrator, the Department, any public or quasi-public entity which shall have responsibility for monitoring and enforcement of the regulatory agreement and use restriction, and any other party necessary for its implementation.

The developer shall be responsible for the cost of monitoring and enforcement of the regulatory agreement and the use restriction by the Project Administrator or other public or quasi-public entity approved by the Department. Provision shall be made in the regulatory agreement for such monitoring and enforcement during the term of affordability and for payment of the Project Administrator or other public or quasi-public entity providing such monitoring and enforcement. Any public or quasi-public entity providing the monitoring and enforcement shall be removable by the Department for cause. In the event of any such removal the entity so removed shall refund to the Project Administrator any payment made for future monitoring and enforcement services and such funds shall be paid to the Project Administrator or other replacement entity approved by the Department for such future monitoring and enforcement services.

### **13. Use Restriction**

There shall be a use restriction in a form specified or approved by the Department. The use restriction and any regulatory agreement shall include provision for satisfaction of pertinent requirements, including:

- (a) The Project Administrator or other public or quasi-public entity approved by DHCD must be a holder of the restriction with the right and the obligation to monitor and enforce it during the term of affordability;
- (b) the restriction must provide for effective monitoring and enforcement by the Project Administrator which may enter into a contract for monitoring services with a public, quasi-public, or private entity experienced in affordable housing operation. The Project Administrator retains final responsibility for ensuring compliance with the restriction;
- (c) the restriction shall provide for selection of eligible tenants of rental units or owners of ownership units in a fair and reasonable manner in compliance with fair housing laws,

and such tenants and owners shall be required to occupy the units as their domiciles and principal residences;

- (d) there shall be a term of affordability for as long as practically possible but for no less than 30 years.

For rental and cooperative housing projects, a regulatory agreement between the developer/owner/manager of a project, the Project Administrator and DHCD may incorporate the necessary use restriction. In homeownership projects, a regulatory agreement incorporating the use restriction will not by itself be sufficient since the units will be sold by the developer upon completion of the project. In such cases a separate use restriction shall be attached to each low or moderate-income unit in the form of a deed restriction or deed rider (as well as in a mortgage where appropriate). In homeownership projects, the use restriction on an affordable unit shall be renewed each time the unit is resold, although failure to do so shall not affect the validity of the restriction.

#### **14. Income and Asset Limits**

For tenants and purchasers household income shall not exceed 80% of area median income based on household size as determined by HUD, but lower limits may be set for tenants of rental housing or purchasers of ownership housing. For homeownership units, the household shall not have owned a home within three years preceding the application, with the exception of displaced homemakers and elderly households (where at least one household member is 55 or over). Household assets shall not exceed \$50,000 in value, provided that in the case of 55 or over or age restricted homeownership units the purchaser household may additionally own a dwelling (to be sold) in which the purchaser has no more than \$150,000 in equity. Assets may include net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds and other forms of capital investment, excluding equity accounts in HUD homeownership programs or state assisted public housing escrow programs. The value of necessary items of personal property, such as furniture and automobiles shall be excluded. (See 24 CFR 5.603 (b)).

The Project Administrator or its designee for monitoring and enforcement shall be responsible for insuring that the income and asset eligibility requirements of potential renter households and potential homeowner households for low or moderate-income units have been met. For existing renters of such units the monitoring and enforcement entity shall be responsible for confirming such eligibility annually.

#### **15. Affordability of Rental Units**

Monthly rents payable by a household exclusive of utilities shall not exceed 30% of the gross monthly income of a household earning 70% of area median income based on household size as determined by HUD. If services are included in the monthly rent (e.g., in assisted living projects) and monthly rent exceeds the limit set forth in the previous sentence, the services must be clearly defined and sufficiently comprehensive to justify the additional amount of household income that must be devoted to rent. In the event a unit or a tenant receives a state, federal or local subsidy, maximum rent may be as provided in the rent subsidy program so long as the tenants share of rent does not exceed the maximum set herein. If household income rises higher than 80% of area

median income based on household size, rent shall be the higher of any such subsidized rent (including both the tenant share and subsidized portion) or 30% of actual household income.

#### **16. Affordability of Ownership Units**

Initial purchase prices shall be established so that appropriately sized households for a unit are not required to spend more than 30% of the gross income of a similarly sized household earning 70% of area median income based on household size, as determined by HUD, for annual debt service on a mortgage (at 30-year fixed-interest rates at the time of initial sale), taxes, homeowners insurance, mortgage insurance and condominium or homeowners fees with no more than a 5% down-payment, including any required entrance deposit. The maximum resale price shall be the initial purchase price increased by the percentage increase in area median income since the time of initial sale. In the event area median income shall have declined the maximum resale price shall be the initial purchase price. The procedure to be followed by a seller desiring to sell a unit shall be specified in the use restriction. The use restriction may permit an adjustment in selling price on account of closing costs and brokers' fees.

#### **17. Land Valuation/Allowable Acquisition Costs**

For purposes of calculating total development costs and profit, an independent appraisal is required to determine the allowable acquisition cost. Allowable acquisition cost shall not be unreasonably greater than the current appraised fair market value under existing zoning without a comprehensive permit in place. Economic benefits of the comprehensive permit shall accrue to the development and shall not be used to substantiate an acquisition cost that is unreasonably greater than fair market value under existing zoning.

Reasonable carrying costs incurred related to the real estate including interest, taxes, insurance, and the costs related to option agreements may be included as project expenses. If a building or improvement to be used in the project is located on the land, reasonable maintenance costs incurred after the date of application and security may be included as project expenses.

#### **18. Fees**

A separate fee schedule approved by the Department shall be established by the Project Administrator and shall be available on request. The fee schedule shall establish the fees payable by a developer. Fees shall be refunded in full if an application is not accepted or is rejected with the need for substantial review. One-half of the fee shall be refunded if an application is not approved.

#### **19. Access to Records**

The Project Administrator shall impose, as a condition in the use restriction and/or regulatory agreement for each approved project, the right of reasonable access to the developer/owner/manager's records necessary to monitor compliance with or to permit enforcement of these guidelines. The developer/owner/manager shall be responsible for maintaining such records.

#### **20. Marketing and Buyer/Tenant Selection**

The developer shall devise a fair and reasonable plan for marketing of units and tenant or buyer selection. In general, tenant or buyer selection should be conducted by means of a lottery. With prior approval of the Project Administrator, the developer may contract with an experienced entity to conduct the marketing of units and the lottery. Before the lottery process commences, the developer must submit a lottery and marketing plan for approval by the Project Administrator. The Project Administrator will review the plan to ensure that the following matters are covered:

- Sales prices or rents of the affordable units (See Sections 15 and 16)
- Maximum income and asset eligibility of households applying for the affordable units (See Section 14)
- Marketing and outreach plan to ensure affirmative marketing will be undertaken
- Use restrictions to be used to ensure continued affordability of ownership units (See Section 13)
- Sample advertisements to be used and designation where ads will be placed

## **21. Setting Up the Lottery**

Whenever possible the lottery should be collaboration between the municipality and the project developer supervised by the Project Administrator. In most cases, the developer, Project Administrator or an experienced entity approved by the Project Administrator will administer the lottery process (including the marketing and buyer or tenant selection), but the municipality shall have an active involvement if there will be a local preference. The developer shall pay for the costs of administering the lottery.

It is recommended that the municipality review the marketing and lottery plans and communicate any concerns to the Project Administrator prior to its final approval. In addition, the Zoning Board of Appeals (ZBA) in its Comprehensive Permit decision may choose to address such issues as who will be conducting the lottery, any local entity which must approve the lottery plan, what kinds of local preference, if any, will be given, and required outreach.

## **22. When to Conduct the Lottery**

The lottery should be conducted after the expiration of all appeals of the Comprehensive Permit and other required permits or approvals not covered by the Comprehensive Permit.

For ownership units, activities leading up to the lottery activities should be scheduled to begin approximately 6 months prior to the anticipated date of occupancy of the first affordable unit. Time is needed for activities such as outreach, advertising, conducting general workshops, and the mortgage application process.

### **Preference Categories**

Municipalities collaborating in the lottery may specify that there be a local preference for up to 70% of the affordable units. The Zoning Board of Appeals in consultation with the local housing partnership or housing committee, the local housing authority, or other town boards should determine the types of local preference. The ZBA may delegate the determination of local preference to these other local agencies, especially the local housing partnership.

Typical local preferences are as follows:

(The following categories are equal in priority)

1. Current residents

- A household in which one or more members is living in the city or town at the time of application. Documentation of residency should be provided, such as rent receipts, utility bills, street listing or voter registration listing.

2. Family of Current Residents

- Close relatives, including children or parents, of a current resident of the city or town.

3. Municipal Employees

- Employees of the municipality, such as teachers, firefighters, police officers, librarians, or town hall employees.

4. Employees of Local Businesses

- Employees of businesses located in the municipality.

The developer and the municipality may negotiate other preference categories or variations of the above categories. However, to ensure that these preferences do not violate applicable fair housing laws, the following procedure should be followed:

A lottery for projects including a local preference should have two applicant pools: a local preference pool and an open pool. After the application deadline has passed, the municipality should determine the number of local resident minority households in the municipality and the percentage of minority applicants in the local preference pool. If the percentage of minorities in local resident households and in the local preference pool is less than the percentage of minorities in the surrounding HUD-defined area, the municipality should make the following adjustments to the local preference pool:

The municipality should hold a preliminary lottery comprised of all minority applicants who did not qualify for the local preference pool, and rank the applicants in order of drawing. Minority applicants should then be added to the local preference pool in order of their rankings until the percentage of minority applicants in the local preference pool is equal to the percentage of minorities in the

surrounding HUD-defined area. Applicants should be entered into all pools for which they qualify. For example, a local resident should be included in both pools.

Minorities should be identified in accordance with the regulatory classifications established by HUD, which are: Native American or Alaskan Native; Asian or Pacific Islander; African-American; Hispanic/Latino; or Cape Verdean.

If the project includes units accessible or adaptable for occupancy by physically disabled persons in conformity with requirements of G.L. c.22 §13A and the Architectural Access Board, preference for those units shall be given to such physically disabled persons.

## **23. Steps in the Lottery Process**

### ***Step 1: Determining Basic Qualifications***

The following standards should generally be used for lottery qualification:

- a) Total household gross income shall not exceed 80% of the area median income, based on household size, as defined by the US Department of Housing and Urban Development (HUD). Annual income shall be determined in the manner set forth in 24 C.F.R. 5.609 (or any successor regulations). Income limits shall be adjusted annually to reflect the HUD figures in effect at the time. A “household” is two or more persons who will live regularly in the unit as their primary residence and who are related by blood, marriage, law, or who have otherwise evidenced a stable inter-dependent relationship, or an individual.
- b) The household shall not have owned a home within three years preceding the application, with the exception of displaced homemakers and elderly households (where at least one household member is 55 or over).
- c) The household shall have sufficient funds for a down payment and closing costs, as determined by the developer and the participating lender.
- d) Household size shall be appropriate for the number of bedrooms in the dwelling unit. It is necessary to set a minimum and maximum household size for the units. For example, a minimum household size of 2 persons is necessary for two bedroom units, and three and four bedroom homes need larger households. Maximum household size may be set in accordance with the State Sanitary Code or applicable local laws.
- e) Household income shall be sufficient to support at least 50% of the price of the home. No more than 50% of the purchase price shall be cash.
- f) Household assets shall be defined in the manner by which HUD determines assets for the purposes of attribution of income. (See 24 CFR 5.609).
- g) Non-household members shall not be permitted as co-signers of the mortgage.
- h) Individuals who have a financial interest in the development and their families shall not be eligible to participate in the lottery.

*Step 2: Materials for Applicants*

The developer shall prepare complete application materials, including an application form, application certification form, authorization for consent to release information, description of the use restriction, a description of the eligibility requirements, and a clear description of the preference system being used and how the lottery winners will be chosen. The materials shall be approved by the Project Administrator prior to their use.

**Step 3: Advertising and Outreach**

Affirmative fair marketing of all the affordable units shall be conducted to provide maximum opportunity for low and moderate-income households, including minority households, to apply for the lottery. Typically, ads will be placed in local and regional newspapers, Boston area newspapers, and minority newspapers. Notices should be sent to local fair housing commissions, area churches, local and regional housing agencies, local housing authorities, civic groups, lending institutions, social service agencies, and other non-profit organizations.

If the municipality is collaborating in the lottery the municipality should offer one or more “workshops” for members of the public to educate them about the lottery process. These workshops may include local officials, lottery administrators, developers, and local bank or finance officials. The date, time, and location of these workshops should be published in ads or flyers that publicize the availability of lottery applications. The workshops are usually held in a municipal building, school, library, or public meeting room. Workshops are usually held in the evening or on weekend days in order to reach as many potential applicants as possible. Attendance at a workshop should not be a precondition of the approval of a lottery application.

The purpose of the workshop is to answer questions that are commonly asked by lottery applicants. Usually a municipal official will welcome the participants and describe the municipality’s role in the affordable housing project. The lottery administrator will then explain the information requested on the application and answer questions about the lottery drawing process. The developer should be present to describe the development and to answer specific questions about the affordable units. It is helpful to have a local banker or financial representative present to answer questions about qualifications for the financing of affordable units. The number of workshops needed is usually determined by the level of interest about the development.

Complete application materials shall be readily available to potential lottery applicants.

Sales prices must be “locked-in” at the time of the initial marketing of the affordable homeownership units. Thereafter, the prices of the homes should not be increased for lottery winners, even if interest rates and HUD income guidelines change.

**Step 4: Documentation**

Applicants for the lottery should be required to submit all of the required materials by a specified deadline. The application period should be at least 60 days. The level of documentation required from the applicant may vary. Some lotteries allow an applicant to “self-qualify” based on reliable information submitted at the workshops. Other lotteries require that applicants obtain a “pre-qualification” letter from a lender and submit verified documentation (e.g. income tax returns) to be eligible for the lottery. Whatever method is chosen, only applicants who are income and asset eligible and who submit all required information should be entered into the lottery.



### **Step 5: Lottery Selection**

Once all required information has been received, each qualified applicant should be assigned a registration number. Ballots with the registration number for applicant households are placed in each and all lottery pools in which they qualify. The ballots are randomly drawn for both of the pools and placed in the order drawn (an applicant in more than one pool would likely have a different rank in each pool.) If a project has units with different numbers of bedrooms, the various unit types should be distributed proportionately between the two lottery pools. Units are then awarded (largest units first) by proceeding down the list of lottery winners to the first household on the list which is of appropriate size for the largest unit available according to the appropriate-unit-size criteria established for the lottery. Once all larger units have been assigned to appropriately sized households in this manner, the selection order returns to the top of the list and selects appropriately sized households for smaller units. This process continues until all available units have been assigned to appropriately sized applicant households. Remaining unselected households will be selected in the same manner should alternate buyers be needed. If the local preference pool requires adjustment as described in Section 23, the preliminary lottery should be conducted before the final lottery is conducted.

### **Step 6: Loan Application**

Once the lottery has been completed, applicants selected to purchase units will be given a reasonable pre-specified time period in which they must secure financing. It is helpful to invite the lottery winners to a loan application workshop often held at a lender's office. It is helpful for a developer to make prior arrangements with local financial institution[s] with respect to financing qualified purchasers. Often such an institution is prepared to make a preliminary approval of a loan. Once it makes such a preliminary approval of a loan, the applicant will then contact the developer and enter into a Purchase and Sale Agreement. The executed Purchase and Sale Agreement will then be submitted to the lender which will issue a firm financing commitment.

### **Step 7: Final Qualification and Closing**

Once a Purchase and Sale Agreement has been signed, the developer or lender should submit income and asset documentation of the applicant to the Project Administrator. Income verification should include verified tax returns from the past year, a recent pay stub and reliable documentation as to other sources of income and assets. The Project Administrator will then verify that the household's income does not exceed 80% of the area median income. t shall also verify that household assets do not exceed the maximum allowable.

After closing on the sale of a unit, the developer should provide the Project Administrator or designee with a copy of the deed and use restriction and evidence of recording.

## **24. Waiver**

Any provision of these guidelines may be waived by the Director of the Department for good cause provided that any such waiver shall be consistent with applicable program requirements.